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U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MAGNA IV COLOR IMAGING, INC.,
And JIAQI ZHAO **PLAINTIFFS**

V. **CASE NO.** 4:19-cv-57-BRW

DEPARTMENT OF HOMELAND SECURITY, an agency of the United States Government, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, an agency of the United States Government, L. FRANCIS CISSNA, Director, United States Citizenship and Immigration Services, and LAURA B. ZUCHOWSKI, Director of the United States Citizenship and Immigration Services Vermont Service Center. **DEFENDANTS**

This case assigned to District Judge Wilson
and to Magistrate Judge Deere

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND REVIEW OF AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT

I. INTRODUCTION

1. This is an action brought pursuant to section 10b of the Administrative Procedure Act, 5 U.S.C. § 702, *et. seq.*, (APA) seeking to hold unlawful and set aside the decision of the United States Citizenship and Immigration Services (hereinafter "USCIS") to deny USCIS case number EAC1815051715, a Form I-129, Petition for Nonimmigrant Worker for H-1B status (hereinafter "2018 H-1B Petition") on or about November 16, 2018.

2. Plaintiff, MAGNA IV Color Imaging, Inc.'s (hereinafter "MAGNA IV") filed the 2018 H-1B Petition on behalf of Plaintiff, Jiaqi Zhao (ZHAO) on or about April 1, 2018 to work in the occupation of Computer Programmer from October 1, 2018 until September 10, 2021. Had Plaintiff ZHAO's 2018 H-1B Petition been approved, he would have been eligible for three (3)

years of additional authorized employment with Plaintiff MAGNA IV beginning September 10, 2021. Plaintiff MAGNA IV paid USCIS a sum of two thousand four hundred and sixty dollars ($2,460) in filing fees for the 2018 H-1B Petition. These fees were not refunded by USCIS upon denial of the H-1B petition.

3. On or about May 10, 2018, Plaintiff MAGNA IV received a notice from USCIS stating that the 2018 H-1B Petition on behalf of Plaintiff ZHAO had been selected for adjudication on April 12, 2018 and assigned the USCIS receipt number EAC1815051715.

4. An H-1B visa classification permits a foreign national to work for an employer in the United States in a position that requires a theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty (or equivalent) as the minimum for entry into the occupation in the United States. See, 8 U.S. Code § 1184(i)(1), and Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA).

5. Despite the record evidence submitted by Plaintiff MAGNA IV proving that its Computer Programmer position is a specialty occupation, under the preponderance of the evidence standard, on November 16, 2018, Defendant USCIS erroneously denied the 2018 H-1B Petition on the sole basis that the position of Computer Programmer was not a specialty occupation. **EXHIBIT D.**

6. Defendants' capricious, arbitrary and erroneous denial of the 2018 H-1B petition was based upon on Defendants' misinterpretation of the Department of Labor's (DOL) *Occupational Outlook Handbook* (OOH) entry describing the educational requirements for computer programmer positions, unjustifiable disregard of evidence submitted by the Plaintiffs, failure to consider all of the evidence submitted by Plaintiff MAGNA IV, failure to apply the preponderance of the evidence standard when reviewing the documentation and evidence

submitted by Plaintiff MAGNA IV, and creation of *ad hoc* standards of evidence not supported by statute, regulation, or policy. **EXHIBIT D.**

7. Defendants' denial of Plaintiff MAGNA IV's 2018 H-1B Petition is representative of a recent adjudicative approach in which the Defendants engage in an unfair and intentional misinterpretation of the plain language of the OOH, elevate this unfair and intentional misrepresentation of the OOH over probative evidence establishing eligibility for H-1B classification provided by petitioners and applicants. See, *Next Generation Tech., Inc. v. Johnson*, 328 F.Supp.3d 252 (S.D.N.Y. Sept. 29, 2017).

8. Because Defendants denied Plaintiff MAGNA IV's 2018 H-1B Petition, Plaintiff ZHAO is unable to work for Plaintiff MAGNA IV for the duration requested by Plaintiff MAGNA IV as an H-1B Visa holder. Furthermore, due to the nature of the application process for H-1B status, there is no guarantee that a second or subsequent H-1B petition would be selected for adjudication to permit Plaintiff ZHAO to work for MAGNA IV after June 11, 2020.[1]

9. If Plaintiff ZHAO is unable to change his status to H-1B status and extend his work authorized status until September 10, 2021, he will be faced with the decision to uproot his life and forfeit his future to live and thrive in the United States. Due to the erroneous denial of

[1] For most private employers, including MAGNA IV, H-1Bs are capped at 65,000 per fiscal year less free trade visas for Chile and Singapore resulting in an available 58,200 available visas for individuals without a U.S Master's Degree or higher. See, INA §§ 214(g)(1)(A) and 214(g)(8)(iv); 8 U.S.C. §§1184(g)(1)(A) and 1184(g)(8)(B)(iv); PL 108-77 and 108-78. If the H-1B limit is reached during the first five (5) days of the earliest filing date after April 1, H-1B selection is conducted by random computer-generated lottery. See *Walker Macy v. USCIS,* 243 F.Supp.3d 1156 (D. Or. 2017). In 2018 approximately 190,098 H-1B petitions were filed during the first five (5) days in April 2018. *https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2019-cap-season*. In 2017 approximately 199,000 H-1B petitions were filed during the first five 95) days in April 2017. *https://www.uscis.gov/news/alerts/uscis-completes-h-1b-cap-random-selection-process-fy-2018*.

the 2018 H-1B Petition, Plaintiff MAGNA IV is being deprived of the needed services of Plaintiff ZHAO for the requested duration of employment.

10. By ignoring Plaintiff MAGNA IV's evidence that the Computer Programmer position satisfied regulatory criteria to be considered a specialty occupation for approval of the 2018 H-1B Petition, and instead applying its misinterpretation of the OOH entry for Computer Programmer, creating unjustifiable *ad hoc* standards of evidence and dismissing evidence without justification for each criterion for which Plaintiff MAGNA IV offered evidence, Defendants acted in an arbitrary and capricious manner and contrary to law. As such, the Court should order Defendants to refrain from taking any adverse action against Plaintiff MAGNA IV and Plaintiff ZHAO while this suit is pending, vacate the denial, approve the 2018 H-1B Petition, direct the Defendant to change Plaintiff ZHAO's nonimmigrant status to H-1B status, and extend his status to September 10, 2021, without interruption.

II. JURISDICATION

11. This being a civil action against the United States arising under the INA, 8 U.S.C. § 1101, et. seq., and the APA, 5 U.S.C. § 701, et. seq., both laws of the United States, original jurisdiction over this matter is vested in this Court under 28 U.S.C. § 1331.

12. This Court also has authority to grant declaratory relief under 28 U.S.C. §§ 2201-02, and injunctive relief under 5 U.S.C. § 702. There exists between the parties an actual and justiciable controversy in which Plaintiffs seek declaratory and injunctive relief to protect their legal rights.

13. The United States has waived its sovereign immunity under 5 U.S.C. § 702.

III. VENUE

14. Venue in this judicial district is proper under 28 U.S.C. § 1391(e)(1), because this is a civil action in which the Defendants are an agency of the United States and officers of the

United States, acting in their official capacity, and the judicial district is where both Plaintiff MAGNA IV and Plaintiff ZHAO reside, and there is no real property involved in the action.

IV. EXHAUSTION OF REMEDIES

15. Defendants November 16, 2018 denial of Plaintiff MAGNA IV's 2018 H-1B Petition constitutes a final agency action under the APA, 5. U.S.C. § 701, *et seq.* Neither the INA nor Department of Homeland Security (hereinafter "DHS") regulations at 8 C.F.R. § 103.3(a) require an administrative appeal of the denial. Accordingly, Plaintiffs have no administrative remedies to exhaust. See, e.g., *EG Enters. v. DHS,* 467 F. Supp. 2d 728, 732-33 (E.D. Mich. 2006) (H-lB petition denial; USCIS agreed in its crossmotion that exhaustion not required); *RCM Technologies, Inc. v. US. Dept. of Homeland Sec.,* 614 F. Supp. 2d 39, 45 (D.D.C. 2009) ("[P]laintiffs need not pursue an AAO appeal before seeking judicial review of denied visa applications in federal court.").

V. PARTIES

16. Plaintiff ZHAO, a citizen of China, graduated in 2017 with a Bachelor of Science degree in Computer Science from the University of Central Arkansas in Conway, Arkansas. Plaintiff ZHAO currently resides at 4645 Renfrow St, Conway, AR 72034. He has worked for Plaintiff MAGNA IV since July 20, 2011 as a Computer Programmer with proper nonimmigrant status under the F-1 Student Optional Practical Training (hereinafter "OPT") program. He is the beneficiary of Plaintiff MAGNA IV's 2018 H-1B Petition. If Defendants had approved the 2018 H-1B Petition for the validity period Plaintiff MAGNA IV requested, Plaintiff ZHAO would have been authorized to work for Plaintiff MAGNA IV in H-1B status through September 10, 2021, with the ability to further extend Plaintiff ZHAO's H-1B status for an additional three (3) years.

17. Plaintiff MAGNA IV, with its principal place of business located at 2401 Commercial Lane, Little Rock, AR 72206, is a commercial printing and advertising business, with approximately 62 employees. Plaintiff MAGNA IV has been in business since 1975 and prides itself on its innovative and forward thinking business strategies to skillfully blend the latest technological advances with highly trained and passionate people. This mindset has allowed Plaintiff MAGNA IV to successfully evolve from its humble beginnings to become a leading print and marketing company in the mid-South—serving diverse clients from coast to coast. For more than 40 years, Plaintiff MAGNA IV has built a winning reputation among corporations, non-profits, restaurants, retailers, higher education institutions, manufacturers, advertising agencies, and graphic designers. Plaintiff MAGNA IV strives to exceed customers' expectations by providing them the expertise and high-quality print and marketing products their businesses need to succeed.

18. Defendant DHS is a cabinet department of the United States federal government responsible for immigration related services at USCIS, enforcement (Immigration and Customs Enforcement or "ICE"), and investigations (Homeland Security Investigations or "HSI"), among other duties. DHS oversees USCIS and its implementation of federal law and policy with respect to immigration benefits applications.

19. Defendant USCIS is a component of the Defendant DHS, 6 U.S.C. § 271, and an "agency" within the meaning of the APA, 5 U.S.C. § 551(1). USCIS is responsible for the adjudication of immigration benefits, including nonimmigrant H-1B visa petitions, and it was the agency that ultimately denied the 2018 H-1B Petition.

20. Defendant L. Francis Cissna is Director of USCIS. In this role, he oversees the adjudication of immigration benefits and establishes and implements governing policies. He has

ultimate responsibility for adjudication of the 2018 H-1B Petition and is sued in his official capacity.

21. Defendant Laura B. Zuchowski is Director of the Vermont Service Center. In this role, she oversees the adjudication of immigration benefits. She is the signatory on the Defendants decision to deny Plaintiff MAGNA IV's 2018 H-1B Petition and is sued in her official capacity.

VI. STANDING

22. Plaintiff MAGNA IV has a legally protected interest in a proper decision by USCIS for the 2018 H-1B Petition submitted on behalf of Plaintiff ZHAO. Plaintiff MAGNA IV paid USCIS the required filing fees associated with the 2018 H-1B Petition and has a right to a decision on the 2018 H-1B Petition which is not arbitrary and capricious, nor an abuse of discretion, and in accordance with law under 5 U.S.C. § 706(2), and the invasion of this right has caused it concrete and particularized injury in that as a result of this it can no longer employ Plaintiff ZHAO for the full duration of work authorization requested. Moreover, there is a causal connection between the injury-in-fact and the Defendants challenged behavior in that it is precisely the Defendants' arbitrary and unlawful decision which prevents Plaintiff MAGNA IV from employing Plaintiff ZHAO under H-1B status and it is certain that the injury-in-fact will be redressed by a favorable ruling of Plaintiff MAGNA IV's 2018 H-1B Petition. Accordingly, Plaintiff MAGNA IV has standing to complain of this action. See, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

23. Plaintiff ZHAO likewise has a legally protected interest in a decision by Defendants on Plaintiff MAGNA IV's 2018 H-1B Petition that is not arbitrary and capricious, nor an abuse of discretion, and which is in accordance with law under per 5 U.S.C. § 706(2), and this right has been invaded because improper denial of 2018 H-1B Petition resulted in a denial of

Plaintiff ZHAO's change and extension of status. The invasion of this right has caused him concrete and particularized injury because he can no longer be employed by Plaintiff MAGNA IV for the fully requested period of time and so cannot derive the revenue he would have received from his employment. Moreover, there is a causal connection between the injury-in-fact and the Defendants' challenged behavior in that it is precisely the Defendants denial of Plaintiff MAGNA IV's 2018 H-1B Petition which prevents Plaintiff ZHAO from working for Plaintiff MAGNA IV in H-1B Visa capacity, and it is certain that the injury-in-fact will be redressed by a favorable ruling of the 2018 H-1B Petition. See, *Lujan, supra* at 501.

VII. LEGAL BAGROUND

H-1B Petition Legal Frame Work

24. Section 101(a)(15)(H)(i)(b) of the INA provides for the admission into the United States of temporary workers sought by petitioning U.S. employers to perform services in a specialty occupation. 8 U.S.C. § 1101(a)(15)(H)(i)(b). This nonimmigrant classification is commonly referred to as "H-1B."

25. The Immigration Act of 1990 (IMMACT 90)[2] revised Section 101(a)(15)(H)(i)(b) of the INA, substituting the previous provision permitting the admission of nonimmigrant foreign nationals "of distinguished merit and ability" with a nonimmigrant category permitting the admission of foreign nationals seeking to enter the United States to perform services in a "specialty occupation."

26. Section 205(c)(2) of IMMACT 90 introduced the current definition of the term "specialty occupation" in Section 214(i) into the INA:

> (1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph (2), the term "specialty occupation" means an occupation that requires–

[2] Pub. L No. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

> (A) theoretical and practical application of a body of highly specialized knowledge, and
> (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

27. The regulations at 8 C.F.R. § 214.2(h)(4)(ii) define "specialty occupation" as follows:

> *Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

28. A petitioner is required to demonstrate that the position for which a foreign national's services are sought is a "specialty occupation." Regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A) provide four (4) ways for a petitioning employer prove that a position is a specialty occupation, and a petitioning employer must only satisfy one (1) criterion:

> To qualify as a specialty occupation, the position must meet one of the following criteria:
> (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
> (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
> (3) The employer normally requires a degree or its equivalent for the position; or
> (4) The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

29. Accordingly, when properly construed, documentary evidence from one or more of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A) will demonstrate that the position is a "specialty occupation" under 8 C.F.R. § 214.2(h)(4)(ii).

30. When proving that a position is a specialty occupation under the relevant regulations, the petitioning employer is not required to present evidence from the list of criteria and also prove that the position is a "specialty occupation" pursuant to the definitional element as stated in 8 C.F.R. § 214.2(h)(4)(ii). To require a petitioning employer to satisfy one of the criteria listed in 8 C.F.R. § 214.2(h)(4)(iii)(A) and further prove that the position meets the definition of specialty occupation under 8 C.F.R. § 214.2(h)(4)(ii), would be—to paraphrase the U.S. District Court in *Buletini v. INS*, 860 F. Supp. 1222, 1231 (E.D. Mich. 1994)—to require a petitioning employer to prove that the position is a "specialty occupation" by requiring the petitioning employer to show that the position is a "specialty occupation."

31. The regulation at 8 C.F.R. 214.2(h)(4)(ii) is a definitional regulation, and the term "specialty occupation" is defined there, as are a number of other terms found in the regulations governing H-1B petitions. However, the regulation at 8 C.F.R § 214.2(h)(4)(iii)(A) sets out the objective criteria by which to determine whether a specific job is a "specialty occupation" under 8 C.F.R. § 214.2(h)(4)(ii). Meeting one of the objective criteria under 8 C.F.R § 214.2(h)(4)(iii)(A) suffices to prove that the position is a "specialty occupation."

H-1B Petition Process

32. In order for a foreign national to receive H-1B status, a U.S. employer must file a nonimmigrant visa petition on the foreign national's behalf with USCIS.

33. The maximum period of stay for a foreign national in H-1B status is generally limited to six (6) years. 8 U.S.C. § l 184(g)(4).

Preponderance of the Evidence Standard for Adjudication of H-1B Petitions

34. Plaintiff MAGNA IV is only required to prove that the position of Computer Programmer satisfies the regulatory requirements for approval of an H-1B petition according to the preponderance of the evidence standard. 8 C.F.R. §214.2(h)(1)(ii)(B).

35. Preponderance of the evidence standard means that based on the evidence it is "more likely than not" that the evidence satisfies the requirement that the position is a specialty occupation. The preponderance of the evidence standard does not require that the evidence demonstrate that the requirement that the position is a specialty occupation is met "beyond a reasonable doubt" but rather that the evidence meets the requirement that the position is a specialty occupation by "51 percent."

36. As stated in the USCIS Adjudicator's Field Manual, "even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is 'probably true' or 'more likely than not,' the applicant or petitioner has satisfied the standard of proof." Adjudicators Filed Manual, Ch. 11.1(c) (citing *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring)).

37. For an H-1B classification, USCIS determines whether the petitioning employer's job qualifies as a specialty occupation and whether the foreign national on whose behalf the petition was filed, known as the "beneficiary", is qualified to perform the job duties required by the specialty occupation. See 8 C.F.R.§§ 214.2(h)(4)(i)(A)(l), (h)(4)(iii)(B)(3).

38. In assessing whether a position meets the requirements under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), i.e., that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, USCIS adjudicators routinely consult the OOH. The OOH is a DOL reference manual, updated every two years, which provides profiles, including the minimum educational requirements for entry in the occupation for hundreds occupations in the United States.

39. According to DOL's OOH, positions classified under the occupational category of Computer Programmer (Standard Occupational Classification (SOC) system, Code 15-1131),

qualify as specialty occupation since the OOH itself "demonstrates that a bachelor's degree or higher in a specific specialty is "normal[ly]" the minimum requirement for entry into the position." See, *Next Generation Tech., Inc. v. Johnson*, 328 F.Supp.3d 252, (S.D.N.Y. Sept. 29, 2017).

VIII. FACTUAL ALLEGATIONS

40. Plaintiff ZHAO first began working in the United States with Plaintiff MAGNA IV in F-1 Student OPT status with a valid Employment Authorization Document (EAD). Plaintiff ZHAO position with MAGNA IV is a Computer Programmer which is in the SOC code of Computer Programmers 15-1131. Plaintiff ZHAO's initial term of OPT work authorization was valid from June 12, 2017 until June 11, 2018. Because Plaintiff ZHAO has a degree in a "STEM" field and Plaintiff MAGNA IV is an employer whom voluntarily enrolled in the E-Verify program, Plaintiff ZHAO was permitted to apply for two (2) additional years of OPT status and received a second EAD that is valid from June 12, 2018 until June 11, 2020. Plaintiff ZHAO is not permitted to apply for additional OPT status with employment authorization beyond June 11, 2020.

41. Plaintiff MAGNA IV employs Computer Programmers to perform the duties of developing Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development, and adding functionality to essential systems. **EXHIBIT A.**[3]

Original H-1B Petition Submission

42. On or about April 1, 2018 Plaintiff MAGNA IV filed its 2018 H-1B Petition for Plaintiff ZHAO in the occupational classification of Computer Programmer seeking to classify

[3] Exhibit A has been redacted to redact Social Security Numbers, taxpayer identification numbers, birth dates, confidential information, proprietary information, trade secrets and other information not relevant or material to Plaintiffs' complaint.

Plaintiff ZHAO as a temporary worker in a specialty occupation under Section 101 (a)(15)(H)(i)(b) of the INA with a request for a change of status and extension of stay. Plaintiff MAGNA IV's 2018 H-1B Petition was selected for adjudication on April 12, 2018 with a notice date of May 3, 2018 and assigned the USCIS Receipt Number EAC1815051715. A complete copy of the initial filing by Plaintiff MAGNA IV's 2018 H-1B Petition is attached as Exhibit A.

EXHIBIT A.

43. As required under the H-1B regulations, Plaintiff MAGNA IV submitted a certified Department of Labor (DOL) Labor Condition Application (LCA) with the 2018 H-1B Petition, stated that the position of Computer Programmer fell under SOC Code 15-1131, "Computer Programmers".

44. In the initial letter of support submitted with the 2018 H-1B Petition (hereinafter "Original Support Letter"), Plaintiff MAGNA IV set forth the following information: the company background; the complexity of the responsibilities for the position of Computer Programmer position responsibilities; that a bachelor's degree in computer science or a related field was a minimum requirement for entry into the position; and that Plaintiff ZHAO had a Bachelor of Science degree in Computer Science from the University of Central Arkansas.

45. According to the Original Support Letter Plaintiff MAGNA IV sought Plaintiff ZHAO's services to work in the position of Computer Programmer, to perform the following duties:

- Manage Mindfire Campaigns in building html pages for cross-media projects;
- Assist in developing, supporting and extending web storefronts power by Pageflex, PrestaShop and Wordpress;
- Build Studio templates for customizable or static items and general site maintenance;
- Site skinning, report building and database implementation;
- Collaborate with departments to streamline the workflow between systems;
- Interact with other personnel in solving complex business and technical problems;
- Work with scratch coding in PHP, MySQL;

- Work with projects involving Angularjs, nodejs, mongodb, C#, Javascript, and SQL; and
- Work with terminal and Linux servers.

EXHIBIT A.

46. In the Original Support Letter, Plaintiff MAGNA IV stated that the position of Computer Programmer required that employees have a minimum of a Bachelor's Degree in Computer Science, or closely-related filed, and experience with HTML, CSS, Javascript, C#, SQL, .Net, PHP, and Object Oriented Programming.

USCIS Request for Evidence

47. On July 17, 2018, Defendant USCIS issued a request for evidence ("RFE") in which it alleged that Plaintiff MAGNA IV had not provided sufficient evidence to prove that the Computer Programmer position was a specialty occupation.

48. In the RFE, USCIS quoted the OOH as stating that "[m]ost computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages." **EXHIBIT B.**

49. Contrary to the holding of *Next Generation, supra,* in the RFE, USICS stated that "the *OOH* does not indicate that Computer Programmer positions require a minimum of a baccalaureate degree in a *specific* specialty, or its equivalent, [and] it does not establish that this is a specialty occupation." **EXHIBIT B.**

50. Contrary to the regulatory requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), USCIS intentionally misstated and misinterpreted the regulatory requirement as it relates to the OOH, since the regulations state that a "baccalaureate or higher degree or its equivalent is **normally** the minimum requirement for entry into the particular position." (emphasis added). The USCIS officer intentionally omitted the qualifier "normally" for the stated requirement.

51. In the RFE, the USCIS stated that the following types of evidence may be used by Plaintiffs to establish that the position of Computer Programmer is a specialty occupation:

- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations. Job postings or advertisements should include: the date and source of the job postings or announcement; and a detailed description of the duties of the position and the educational, training, and experience requirements of the position;
- Documentation to establish that the company or firm offering the position in these job postings or announcements is within your industry and is similar to your organization;
- Copies of letters or affidavits from firms or individuals in the industry attesting that similar organizations routinely employ and recruit only individuals with a bachelor's degree or higher degree in a specific specialty or its equivalent;
- Documentary evidence or your past employment practices for the position, including: documentation which lists the number of employees hired for the position in the last two years; and
- Documentation which lists the educational, experience, training, and skills requirements of the offered position, such as official position descriptions, job offer letters, or job postings; and
- Any evidence you wish to provide that you feel satisfies this criterion.

EXHIBIT B.

Plaintiff MAGNA IV'S RFE Response

52. Plaintiff MAGNA IV submitted its RFE Response to Defendant USCIS on or about October 3, 2018. **EXHIBIT C.**[4]

53. In its RFE Response, Plaintiff MAGNA IV submitted probative, detailed, relevant and sufficient evidence to prove under the preponderance of the evidence standard, that the Computer Programmer position met regulatory criteria to be considered a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – (4). **EXHIBIT C.**

54. The RFE Response included a complete copy of the United States District Court decision in *Next Generation Tech., Inc. v. Johnson*, 328 F.Supp.3d 252, (S.D.N.Y. Sept. 29,

[4] Exhibit C has been redacted to redact Social Security Numbers, taxpayer identification numbers, birth dates, confidential information, proprietary information, trade secrets and other information not relevant or material to Plaintiffs' complaint.

2017), which held that the OOH itself designates the position of a Computer Programmer as a specialty occupation. **EXHIBIT C.**

55. The RFE Response included a copy of the DOL's OOH and DOLS's O*NET Online (hereinafter "O*NET") entries for the occupation of Computer Programmer, demonstrating that the position of Computer Programmer normally requires a bachelor's degree in a specific specialty, i.e. Computer Science or a related field, since according to the O*NET, eighty-eight percent (88%) of Computer Programmer positions require at least a bachelor's degree, and the OOH states that most Computer Programmer positions require a bachelor's degree in computer science, or a related field. **EXHIBIT C.**

56. The O*NET is an application that was created by the DOL for the general public to provide broad access to the O*NET database of occupational information. The O*NET database includes information on skills, abilities, knowledges, work activities, and interests associated with occupations. This information can be used to facilitate career exploration, vocational counseling, and a variety of human resources functions, such as developing job orders and position descriptions and aligning training with current workplace needs. https://www.onetonline.org/help/online/. Information in the O*NET is available for over 900 occupations. Each occupational title and code is based on the 2010 version of the Standard Occupational Classification system.

57. Plaintiff MAGNA IV's RFE Response included job postings from seven (7) similar companies with similar Computer Programmer positions with detailed analysis of each of the job listings demonstrating how each company is similar to Plaintiff MAGNA IV, how the position at each similar company is similar to Plaintiff MAGNA IV's Computer Programmer position, and why this demonstrates that the position of Computer Programmer is a specialty occupation because a bachelor's degree in specific specialty, vis-à-vis a Computer Science

degree, is normally required for each similar position. When providing this evidence, Plaintiff MAGNA IV provided an analysis demonstrating that the job postings showed requiring a Bachelor's Degree in Computer Science is common within the industry in parallel positions among similar organizations, the date and source of the job postings or announcement, and a detailed description of the duties of the position and the educational, training, and experience requirements of the position. **EXHIBIT C.**

58. Plaintiff MAGNA IV's RFE Response included expert letters providing detailed analysis to provide relevant, persuasive, probative and sufficient evidence that the position of Computer Programmer is a specialty occupation, to wit, by including expert letters from: John Winters, also known as "Casey Winters", an employee of MAGNA IV; Chonghui Li, an employee of Adobe, Inc; Dr. Mark Smith, a Senior Lecturer at the University of Central Arkansas, Department of Computer Science; and Dr. Michael Lavine, a Professor of Cyber Security at the University of Maryland-University College. **EXHIBIT C.**

59. Plaintiff MAGNA IV's RFE Response included a nine (9) page official and highly detailed job duties description provided by Plaintiff MAGNA IV describing the detailed duties of the position and why the position of Computer Programmer is so complex or unique that it can be performed only by an individual with a Bachelors Degree in Computer Science, or in the alternative that the nature of the specific duties of Computer Programmer are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate in Computer Science or higher degree. **EXHIBIT C.**

60. Plaintiff MAGNA IV's RFE Response included resumes for employees at MAGNA IV over the last two (2) years holding the position of Computer Programmer to establish that MAGNA IV normally requires a Bachelor's Degree in Computer Science to fill the position, as specially requested in the USCIS RFE. **EXHIBIT C.**

61. Plaintiffs MAGNA IV's RFE Response included relevant, persuasive, probative and sufficient evidence to establish that the position of Computer Programmer met at least one (1) of the regulatory requirements under 8 C.F.R. § 214.2(h)(4)(iii)(A) to demonstrate under the preponderance of the evidence standard that the position of Computer Programmer was a specialty occupation. **EXHIBIT C.**

USCIS Denial Decision of the 2018 H-1B Petition

62. On November 16, 2018, Defendant USCIS, acting through Laura B. Zuchowski, Director of the USCIS Vermont Service Center, issued a decision denying Plaintiff MAGNA IV's 2018 H-1B Petition ("Denial Decision") on the sole basis that Plaintiff MAGNA IV allegedly failed to establish that the Computer Programmer position is a specialty occupation. **EXHIBIT D.**

63. In the Denial Decision, USCIS concluded that the OOH did not provide evidence that the position of a Computer Programmer is a specialty occupation in direct contradiction of the holding of *Next Generation Tech.*, *supra* (holding that if "most" Computer Programmers have a bachelor's degree in a computer-related field, then it follows that this qualification is "normally" required for this position and so the job qualifies as a specialty occupation).[5] USCIS further erroneously stated that the U.S District Court decision in *Next Generation Tech., supra* was an unpublished Administrative Appeals Office (AAO) decision, and thus did not provide a binding rule of decision for the instant petition. **EXHIBIT D.**

64. In the Denial Decision, USCIS erroneously stated that the U.S. District Court decision of *Residential Finance Corporation v. U.S. Citizenship and Immigration Services,* 839

[5] USCIS itself treats the OOH as an authoritative source. See, *Matter of Sea,* 19 I&N Dec. 817, 819 (Com. 1988).

F.Supp.2d 985 (SD Ohio 2012), was an unpublished AAO decision, and did not provide a binding rule of decision for the instant petition. **EXHIBIT D.**

65. In the Denial Decision, USICS erroneously concluded that information contained in the DOL's O*NET for the position of Computer Programmer establishing that eighty-eight percent (88%) of Computer Programmer positions require at least a bachelor's degree did not provide any evidence that the position of a Computer Programmer was a specialty occupation, in direct contradiction to *Next Generation Tech.* **EXHIBIT D.**

66. In the Denial Decision, USCIS rejected Plaintiff MAGNA IV's submission of evidence from seven (7) similar organizations establishing that a Bachelor's Degree in Computer Science is normally the requirement for Computer Programmer positions in the industry, including Quad Graphics, Minutemen Press, Visaprint, Millers Professional Imaging, Fairfax Imaging, Zazzle and Menesha Packaging. USCIS erroneously stated that Plaintiff MAGNA IV did not demonstrate how these companies were similar, how the positions were similar, and how each of the positions demonstrated that Bachelor's Degree in a specific specialty was normally required. However, Plaintiff's RFE submission did provide an analysis of how each company was similar, how the positions were similar to Computer Programmer Position at MAGNA IV, and further demonstrate how each job posting stated that the Computer Programming position normally required a Bachelor's Degree in the specific specialty of Computer Science, or a related field. **EXHIBIT D.**

67. In the Denial Decision, USCIS arbitrarily and capriciously rejected all of the expert letters submitted in support of Plaintiff MAGNA IV's evidence to establish that the position of Computer Programmer met at least one (1) of the regulatory requirements to prove that position of Computer Programmer is a specialty occupation. **EXHIBIT D.**

68. In the Denial Decision, the USCIS officer rejected the expert letter submitted by Mr. John "Casey" Winters without reason or explanation, and did not address the substance of the letter, or acknowledge the existence of the letter. **EXHIBIT D.**

69. In the Denial Decision, USCIS rejected the expert letter submitted by Mr. Chonghui Li without reason or explanation, and did not address the substance of the letter, or acknowledge the existence of the letter. **EXHIBIT D.**

70. In the Denial Decision, USCIS rejected the expert letter submitted by Dr. Michael Lavine without reason or explanation, and did not address the substance of the letter, or acknowledge the existence of the letter. Indeed, the Denial Decision is devoid of any mention of Dr. Michael Lavine's name, or mention of his expert letter. **EXHIBIT D.**

71. In the Denial Decision, USCIS rejected the expert letter from Professor Mark Smith without reason or explanation and did not address the substance of the letter. **EXHIBIT D.**

72. In the Denial Decision, USCIS rejected the expert letter from Dr. Emre Celebi without reason or explanation, and did not address the substance of the letter.

73. In the Denial Decision, USCIS provided an analysis of an expert letter provided by an unnamed and unidentified "Professor." **EXHIBIT D.**

74. In the Denial Decision, without citation to any relevant statute, regulation, or USCIS policy, and in direct contradiction to the instructions provided in the USCIS RFE, USCIS created an *ad hoc* standard of evidence for approval of an H-1B Petition by stating that the "Professor's (*sic*) letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue [and] [there] is no indication that he/she (*sic*) has conducted any research or studies pertinent to the educational requirements for such positions or parallel positions in your industry or similar organizations." **EXHIBIT D.**

75. In the Denial Decision, without citation to any relevant statute, regulation, or USCIS policy, and in direct contradiction to the instructions provided in the USCIS RFE, USCIS created an *ad hoc* standard of evidence for approval of an H-1B Petition by stating that:

> The letters of opinion provided, where employees of other companies declare a Computer Programmer to be professional in nature, does not establish that the position requires the expertise of a bachelor's degree recipient through the industry. None of the individuals provided documentation to verify that their respective companies routinely employ bachelor's degree recipients to perform the duties of a Computer Programmer.

EXHIBIT D.

76. In the Denial Decision, USCIS rejected Plaintiff MAGNA IV's nine (9) page detailed job description, and accompanying evidence, including: four (4) detailed expert letters; analysis of seven (7) job postings for positions at similar companies in the occupation of Computer Programmers; and without citation to any relevant statute, regulation, or USCIS policy, and in direct contradiction to the instructions provided in the USCIS RFE, USCIS created an *ad hoc* standard of evidence for approval of an H-1B Petition by stating that:

> While USCIS may provide a degree of due consideration to a petitioner's support letter, without further evidence or additional details in the instant petition, the support letter containing the description of the job duties, is insufficient to establish that the offered position qualifies as a specialty occupation. Further, you have not provided evidence, such as industry publications or letters, which highlight the complex and unique nature of your products or services for which the beneficiary will be engaged while in H-1B nonimmigrant status.

EXHIBIT D.

77. In the Denial Decision, without citation to any relevant statute, regulation, or USCIS policy, and in direct contradiction to the instructions provided in the USCIS RFE, USCIS created an *ad hoc* standard of evidence demanding that the Plaintiff MAGNA IV should have

provided evidence of its hiring practices of the course of forty-three (43) years. This, despite the fact that the USCIS RFE had only requested that Plaintiff MAGNA IV provide evidence of its hiring practice over the last two (2) years. **EXHIBIT D.**

78. In the Denial Decision, USCIS erroneously stated that Plaintiff MAGNA IV's nine (9) page detailed job duties description lacked detail in its description to determine that the duties of Computer Programmer require theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in a specific specialty as a minimum for entry into the position, despite the fact that the nine (9) page detailed job duties description was highly detailed and specific. **EXHIBIT D.**

79. In the Denial Decision, USCIS misinterpreted and impermissibly applied the holding of *Defensor v. Meissner,* 201 F.3d. 384 (5th Cir. 2000), to reject the probative, sufficient, and persuasive evidence submitted by the Plaintiff MAGNA VI in the RFE Response. **EXHIBIT D.**

80. In the Denial Decision, USCIS failed to adhere to established USCIS policy by denying MAGNA IV's 2018 H-1B Petition on elements not based on statutory or regulatory requirements. Ohata, RE: Guidance On The Limitation Of Denials Based On Requests For Evidence Standards Not Required By The Statute, Regulations Or Form Instructions, 2005 WL 3964530, (January 6, 2005). **EXHIBIT E.**

81. Under 5 U.S.C. §§ 702 and 704, Plaintiff MAGNA IV and Plaintiff ZHAO have suffered a "legal wrong" and have been "adversely affected or aggrieved" by agency action for which there is no adequate remedy at law.

COUNT ONE

Violation of the Administrative Procedure Act 5 U.S.C. § 701, et seq.

82. Plaintiff MAGNA IV and Plaintiff ZHAO re-allege and incorporate herein by reference, as if fully set forth herein, the allegations in paragraphs 1-81 above.

83. The APA empowers this Court to hold unlawful and set aside agency action that is "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; . . . [or] (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A).

84. Defendants denied Plaintiff MAGNA IV's 2018 H-1B Petition solely on the basis that the evidence in the record was insufficient to establish that Plaintiff MAGNA IV's Computer Programmer position is a specialty occupation.

85. Plaintiff MAGNA VI submitted sufficient, probative, relevant and persuasive evidence demonstrating that the position satisfied at least one (1) of the four (4) regulatory criteria for demonstrating that the Computer Programmer position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(l)-(4).

86. Defendants denial of Plaintiff MAGNA IV's 2018 H-1B Petition was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or in the alternative Defendants denial of Plaintiff MAGNA IV's 2018 H-1B Petition was in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

87. Defendants failed to properly consider all of the evidence submitted to USCIS by Plaintiff MAGNA IV, misread and misapplied the evidence provided by the DOL OOH and O*NET entries for Computer Programmer positions — in direct contradiction of federal case law, and created *ad hoc* standards of evidence that are not supported by statute, regulation or relevant USCIS policy.

88. As such, by denying Plaintiff MAGNA IV's 2018 H-1B Petition, the Defendants decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or in the alternative, the Defendants decision was in excess of statutory jurisdiction, authority, or limitations, or short of statutory right in violation of the APA.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff MAGNA IV and Plaintiff ZHAO request that this Court:

I. Declare that Defendants' decision that the evidence submitted by Plaintiff MAGNA VI in its 2018 H-1B Petition was insufficient to establish that the Computer Programmer position is a specialty occupation was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or in the alternative, declare that the Defendants' decision was in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the APA. 5 U.S.C. § 706(2)(A);

II. Vacate the denial of the 2018 H-1B Petition and remand this matter to Defendants with instructions to approve the Form I-129, Petition for Nonimmigrant Worker, EAC1815051715, filed by Plaintiff MAGNA IV and change and extend Plaintiff ZHAO's nonimmigrant status to H-1B status with a duration of status until September 10, 2021, within ten days of the date of the Court's Order;

III. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

IV. Grant such other relief as the Court deems just, equitable and proper.

Respectfully submitted,



George Raff Ernst, Ark. Bar No. 2012076
Misty Wilson Borkowski, Ark. Bar No. 97004
CROSS, GUNTER, WITHERSPOON & GALCHUS, P.C.
500 President Clinton Avenue, Ste. 200
Little Rock, AR 72201
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(1) Member of Arkansas and Texas Bars
(2) Member of Arkansas and Oklahoma Bars

All others Arkansas Bar

March 30, 2018

USCIS/Vermont Service Center
Attn: I-129 (H-1B Cap)
4 Lemnah Drive
St. Albans, VT 05479

VIA FEDEX OVERNIGHT

Re: H-1B Regular Cap
Petitioner, MAGNA IV Color Imaging, Inc.
Beneficiary, Jiaqi Zhao

To Whom It May Concern:

Please find enclosed the following:

1. **G-28, Notice of Entry of Appearance of Attorney** (Petitioner)

2. **Form I-129, Petition for Nonimmigrant Worker**
   a. **H Classification Supplement**
   b. **H-1B Data Collection and Filing Fee Exemption Supplement**
      i. $460 filing fee, payable to U.S. Department of Homeland Security
      ii. $1,500 ACWIA Training Fee, payable to U.S. Department of Homeland Security
      iii. $500 Fraud Prevention and Detection Fee, payable to U.S. Department of Homeland Security;
      iv. The number of Magna IV Color Imaging, Inc. employees who hold an H or L nonimmigrant visa is well under 50%. As such, Magna IV Color Imaging, Inc. is not subject to additional fees required under Pub. L 114-113.
   c. Certified Form ETA 9035E;
   d. Petitioner's letter regarding description of position, Beneficiary's qualifications, and Petitioner's offer of employment;

e. Expert Opinion Letter by Dr. Emre Celebi, Ph.D., and Curriculum Vitae;
f. Evidence of Beneficiary's educational qualifications (degrees, transcripts) and Curriculum Vitae;
g. Copy of Beneficiary's biographical page from current passport;
h. Copy of Beneficiary's current visa stamp, entry stamp, and Form I-94;
i. Copy of Beneficiary's I-20s;
j. Copy of Beneficiary's OPT EAD card;
k. Recent pay stubs; and
l. Proof of Petitioner's Ability to Pay Offered Salary.

DUPLICATE COPY OF THIS PACKET IS INCLUDED
PLEASE FORWARD TO KCC FOR CONSULAR PROCESSING UPON APPROVAL

If you have any questions or concerns regarding the petition and supporting documentation, please do not hesitate to contact me.

Kindest regards,

CROSS, GUNTER, WITHERSPOON & GALCHUS, P.C.

Misty Wilson Borkowski

MWB/
Enclosures

cc: Autumn Williams (w/ encl.)

Notice of Entry of Appearance as Attorney or Accredited Representative

Department of Homeland Security

DHS
Form G-28
OMB No. 1615-0105
Expires 03/31/2018

Part 1. Information About Attorney or Accredited Representative

1. USCIS ELIS Account Number (*if any*) ▶

Name and Address of Attorney or Accredited Representative

2.a. Family Name (*Last Name*): Borkowski
2.b. Given Name (*First Name*): Misty
2.c. Middle Name: Wilson
3.a. Street Number and Name: 500 President Clinton Avenue
3.b. Apt. ☐ Ste. ☒ Flr. ☐: 200
3.c. City or Town: Little Rock
3.d. State: AR
3.e. ZIP Code: 72201
3.f. Province:
3.g. Postal Code:
3.h. Country: United States
4. Daytime Telephone Number: 501-371-9999
5. Fax Number: 501-371-0035
6. E-Mail Address (*if any*): mborkowski@cgwg.com
7. Mobile Telephone Number (*if any*):

Part 2. Notice of Appearance as Attorney or Accredited Representative

This appearance relates to immigration matters before (*Select only one box*):

1.a. ☒ USCIS
1.b. List the form numbers: I-129, I-907
2.a. ☐ ICE
2.b. List the specific matter in which appearance is entered:
3.a. ☐ CBP
3.b. List the specific matter in which appearance is entered:

I enter my appearance as attorney or accredited representative at the request of:

4. Select **only one** box:
☐ Applicant ☒ Petitioner ☐ Requestor
☐ Respondent (ICE, CBP)

Information About Applicant, Petitioner, Requestor, or Respondent

5.a. Family Name (*Last Name*):
5.b. Given Name (*First Name*):
5.c. Middle Name:
6. Name of Company or Organization (*if applicable*): Magna IV Color Imaging, Inc.

Part 2. Notice of Appearance as Attorney or Accredited Representative *(continued)*

Information About Applicant, Petitioner, Requestor, or Respondent (continued)

7. USCIS ELIS Account Number *(if any)*

▶

8. Alien Registration Number (A-Number) or Receipt Number

9. Daytime Telephone Number

501-376-2397

10. Mobile Telephone Number *(if any)*

11. E-Mail Address *(if any)*

[redacted]

Mailing Address of Applicant, Petitioner, Requestor, or Respondent

NOTE: Provide the mailing address of the applicant, petitioner, requestor, or respondent. **Do not** provide the business mailing address of the attorney or accredited representative **unless** it serves as the safe mailing address on the application, petition, or request being filed with this Form G-28.

12.a. Street Number and Name: 2401 Commercial Lane

12.b. Apt. ☒ Ste. ☐ Flr. ☐: 200

12.c. City or Town: Little Rock

12.d. State: AR

12.e. ZIP Code: 72206

12.f. Province:

12.g. Postal Code:

12.h. Country

United States

Part 3. Eligibility Information for Attorney or Accredited Representative

Select **all applicable** items.

1.a. ☒ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest courts of the following states, possessions, territories, commonwealths, or the District of Columbia. *(If you need additional space, use Part 6.)*

Licensing Authority

Supreme Court of Arkansas

1.b. Bar Number *(if applicable)*

AR 97004

1.c. Name of Law Firm

Cross, Gunter, Witherspoon & Galchus, P.C.

1.d. I *(choose one)* ☒ *am not* ☐ *am* subject to any order of any court or administrative agency disbarring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below. *(If you need additional space, use Part 6.)*

2.a. ☐ I am an accredited representative of the following qualified nonprofit religious, charitable, social service, or similar organization established in the United States, so recognized by the Department of Justice, Board of Immigration Appeals, in accordance with 8 CFR 292.2. Provide the name of the organization and the expiration date of accreditation.

2.b. Name of Recognized Organization

2.c. Date accreditation expires *(mm/dd/yyyy)* ▶

Part 3. Eligibility Information for Attorney or Accredited Representative *(continued)*

3. ☐ I am associated with

[ ], the attorney or accredited representative of record who previously filed Form G-28 in this case, and my appearance as an attorney or accredited representative is at his or her request.

NOTE: If you select this item, also complete **Item Numbers 1.a. - 1.b. or Item Numbers 2.a. - 2.c.** in **Part 3.** *(whichever is appropriate).*

4.a. ☐ I am a law student or law graduate working under the direct supervision of the attorney or accredited representative of record on this form in accordance with the requirements in 8 CFR 292.1(a)(2)(iv).

4.b. Name of Law Student or Law Graduate

Part 4. Applicant, Petitioner, Requestor, or Respondent Consent to Representation, Contact Information, and Signature

Consent to Representation and Release of Information

1. I have requested the representation of and consented to being represented by the attorney or accredited representative named in **Part 1.** of this form. According to the Privacy Act of 1974 and DHS policy, I also consent to the disclosure to the named attorney or accredited representative of any record pertaining to me that appears in any system of records of USCIS, ICE or CBP.

When you (the applicant, petitioner, requestor, or respondent) are represented, DHS will send notices to both you and your attorney or accredited representative either through mail or electronic delivery.

DHS will also send the Form I-94, Arrival Departure Record, to you **unless** you select **Item Number 2.a.** in **Part 4.** All secure identity documents and Travel Documents will be sent to you (the applicant, petitioner, requestor, or respondent) at your U.S. mailing address **unless** you ask us to send your secure identity documents to your attorney of record or accredited representative.

If you do not want to receive original notices or secure identity documents directly, but would rather have such notices and documents sent to your attorney of record or accredited representative, please select **all applicable** boxes below:

2.a ☒ I request DHS send any notice (including Form I-94) on an application, petition, or request to the U.S. business address of my attorney of record or accredited representative as listed in this form. I understand that I may change this election at any future date through written notice to DHS.

2.b. ☐ I request that DHS send any secure identity document, such as a Permanent Resident Card, Employment Authorization Document, or Travel Document, that I am approved to receive and authorized to possess, to the U.S. business address of my attorney of record or accredited representative as listed in this form or to a designated military or diplomatic address for pickup in a foreign country (if permitted). I consent to having my secure identity document sent to my attorney of record or accredited representative's U.S. business address and understand that I may request, at any future date and through written notice to DHS, that DHS send any secure identity document to me directly.

3.a. Signature of Applicant, Petitioner, Requestor, or Respondent

➡ Autumn Williams

3.b. Date of Signature *(mm/dd/yyyy)*▶ 03/27/2018

Part 5. Signature of Attorney or Accredited Representative

I have read and understand the regulations and conditions contained in 8 CFR 103.2 and 292 governing appearances and representation before the Department of Homeland Security. I declare under penalty of perjury under the laws of the United States that the information I have provided on this form is true and correct.

1. Signature of Attorney or Accredited Representative

2. Signature of Law Student or Law Graduate

3. Date of Signature *(mm/dd/yyyy)*▶ 03/28/2018

Part 6. Additional Information

Use the space provided below to provide additional information pertaining to **Part 3., Item Numbers 1.a. - 1.d.** or to provide your U.S. business address for purposes of receiving secure identity documents for your client (if your client has consented to your receipt of such documents under **Part 4.**)

Petition for a Nonimmigrant Worker

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

For USCIS Use Only	Receipt	Partial Approval (explain)	Action Block
Class: _____ No. of Workers: _____ Job Code: _____ Validity Dates: _____ From: _____ To: _____	☐ Classification Approved ☐ Consulate/POE/PFI Notified At: _____ ☐ Extension Granted ☐ COS/Extension Granted		

► **START HERE - Type or print in black ink.**

Part 1. Petitioner Information

If you are an individual filing this petition, complete **Item Number 1. If you are a company or an organization filing this petition,** complete **Item Number 2.**

1. Legal Name of Individual Petitioner

Family Name (Last Name)	Given Name (First Name)	Middle Name

2. Company or Organization Name

MAGNA IV Color Imaging, Inc.

3. Mailing Address of Individual, Company or Organization

In Care Of Name: Autumn Williams

Street Number and Name	Apt. Ste. Flr.	Number
2401 Commercial Lane	☐ ☒ ☐	200

City or Town	State	ZIP Code
Little Rock	AR	72205

Province	Postal Code	Country
		United States

4. Contact Information

Daytime Telephone Number	Mobile Telephone Number	Email Address (if any)
501-376-2397		[redacted]

5. Other Information

Federal Employer Identification Number (FEIN)	Individual IRS Tax Number	U.S. Social Security Number (if any)
► [redacted]	►	►

Part 2. Information About This Petition (See instructions for fee information)

1. **Requested Nonimmigrant Classification** (Write classification symbol): H-1B

2. **Basis for Classification** (select **only one** box):
   - ☒ **a.** New employment.
   - ☐ **b.** Continuation of previously approved employment without change with the same employer.
   - ☐ **c.** Change in previously approved employment.
   - ☐ **d.** New concurrent employment.
   - ☐ **e.** Change of employer.
   - ☐ **f.** Amended petition.

3. **Provide the most recent petition/application receipt number for the beneficiary. If none exists, indicate "None."** ▶ None

4. **Requested Action** (select **only one** box):
   - ☐ **a.** Notify the office in **Part 4.** so each beneficiary can obtain a visa or be admitted. (**NOTE:** A petition is not required for E-1, E-2, E-3, H-1B1 Chile/Singapore, or TN visa beneficiaries.)
   - ☒ **b.** Change the status and extend the stay of each beneficiary because the beneficiary(ies) is/are now in the United States in another status (see instructions for limitations). This is available only when you check "New Employment" in **Item Number 2.**, above.
   - ☐ **c.** Extend the stay of each beneficiary because the beneficiary(ies) now hold(s) this status.
   - ☐ **d.** Amend the stay of each beneficiary because the beneficiary(ies) now hold(s) this status.
   - ☐ **e.** Extend the status of a nonimmigrant classification based on a free trade agreement. (See Trade Agreement Supplement to Form I-129 for TN and H-1B1.)
   - ☐ **f.** Change status to a nonimmigrant classification based on a free trade agreement. (See Trade Agreement Supplement to Form I-129 for TN and H-1B1.)

5. **Total number of workers included in this petition.** (See instructions relating to when more than one worker can be included.) ▶ 1

Part 3. Beneficiary Information (Information about the beneficiary/beneficiaries you are filing for. Complete the blocks below. Use the Attachment-1 sheet to name each beneficiary included in this petition.)

1. **If an Entertainment Group, Provide the Group Name**

2. **Provide Name of Beneficiary**

Family Name (Last Name)	Given Name (First Name)	Middle Name
Zhao	Jiaqi	

3. **Provide all other names the beneficiary has used.** Include nicknames, aliases, maiden name, and names from all previous marriages.

Family Name (Last Name)	Given Name (First Name)	Middle Name
	Richard	

4. **Other Information**

Date of birth (mm/dd/yyyy) [redacted] · Gender ☒ Male ☐ Female · U.S. Social Security Number (if any) ▶

Part 3. Beneficiary Information (Information about the beneficiary/beneficiaries you are filing for. Complete the blocks below. Use the Attachment-1 sheet to name each beneficiary included in this petition.) (continued)

Alien Registration Number (A-Number)
► A-

Country of Birth

Province of Birth

Country of Citizenship or Nationality

5. **If the beneficiary is in the United States, complete the following:**

Date of Last Arrival (mm/dd/yyyy)

I-94 Arrival-Departure Record Number
►

Passport or Travel Document Number

Date Passport or Travel Document Issued (mm/dd/yyyy)

Date Passport or Travel Document Expires (mm/dd/yyyy)

Passport or Travel Document Country of Issuance

Current Nonimmigrant Status

Date Status Expires or D/S (mm/dd/yyyy)

Student and Exchange Visitor Information System (SEVIS) Number (if any)

Employment Authorization Document (EAD) Number (if any)

6. **Current Residential U.S. Address** (if applicable) (do not list a P.O. Box)

Street Number and Name

Apt. Ste. Flr. ☐ ☐ ☐ Number

City or Town

State

ZIP Code

Part 4. Processing Information

1. If a beneficiary or beneficiaries named in **Part 3.** is/are outside the United States, or a requested extension of stay or change of status cannot be granted, state the U.S. Consulate or inspection facility you want notified if this petition is approved.

a. **Type of Office** (select only one box): ■ Consulate ☐ Pre-flight inspection ☐ Port of Entry

b. **Office Address (City)**

c. **U.S. State or Foreign Country**

d. **Beneficiary's Foreign Address**

Street Number and Name

Apt. Ste. Flr. ■ ☐ ☐ Number

City or Town

State

Province

Postal Code

Country

2. Does each person in this petition have a valid passport? ■ Yes ☐ No. If no, go to **Part 9.** and type or print your explanation.

Part 4. Processing Information (continued)

3. Are you filing any other petitions with this one?
☐ Yes. If yes, how many? ▶ ☒ No

4. Are you filing any applications for replacement/initial I-94, Arrival-Departure Records with this petition? Note that if the beneficiary was issued an electronic Form I-94 by CBP when he/she was admitted to the United States at an air or sea port, he/she may be able to obtain the Form I-94 from the CBP Website at www.cbp.gov/i94 instead of filing an application for a replacement/initial I-94.
☐ Yes. If yes, how many? ▶ ☒ No

5. Are you filing any applications for dependents with this petition?
☐ Yes. If yes, how many? ▶ ☒ No

6. Is any beneficiary in this petition in removal proceedings?
☐ Yes. If yes, proceed to **Part 9.** and list the beneficiary's(ies) name(s). ☒ No

7. Have you ever filed an immigrant petition for any beneficiary in this petition?
☐ Yes. If yes, how many? ▶ ☒ No

8. Did you indicate you were filing a new petition in **Part 2.**?
☒ Yes. If yes, answer the questions below. ☐ No. If no, proceed to **Item Number 9.**

a. Has any beneficiary in this petition ever been given the classification you are now requesting within the last seven years?
☐ Yes. If yes, proceed to **Part 9.** and type or print your explanation. ☒ No

b. Has any beneficiary in this petition ever been denied the classification you are now requesting within the last seven years?
☐ Yes. If yes, proceed to **Part 9.** and type or print your explanation. ☒ No

9. Have you ever previously filed a nonimmigrant petition for this beneficiary?
☐ Yes. If yes, proceed to **Part 9.** and type or print your explanation. ☒ No

10. If you are filing for an entertainment group, has any beneficiary in this petition not been with the group for at least one year?
☐ Yes. If yes, proceed to **Part 9.** and type or print your explanation. ☒ No

11.a. Has any beneficiary in this petition ever been a J-1 exchange visitor or J-2 dependent of a J-1 exchange visitor?
☐ Yes. If yes, proceed to **Item Number 11.b.** ☒ No

11.b. If you checked yes in **Item Number 11.a.**, provide the dates the beneficiary maintained status as a J-1 exchange visitor or J-2 dependent. Also, provide evidence of this status by attaching a copy of either a DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, a Form IAP-66, or a copy of the passport that includes the J visa stamp.

Part 5. Basic Information About the Proposed Employment and Employer

Attach the Form I-129 supplement relevant to the classification of the worker(s) you are requesting.

1. Job Title
Computer Programmer

2. LCA or ETA Case Number
I-200-18052-579974

Part 5. Basic Information About the Proposed Employment and Employer (continued)

3. Address where the beneficiary(ies) will work if different from address in **Part 1.**

Street Number and Name	Apt. Ste. Flr.	Number
2401 Commercial Lane	☐ ☒ ☐	200

City or Town	State	ZIP Code
Little Rock	AR	72206

4. Did you include an itinerary with the petition? ☐ Yes ☒ No

5. Will the beneficiary(ies) work for you off-site at another company or organization's location? ☐ Yes ☒ No

6. Will the beneficiary(ies) work exclusively in the Commonwealth of the Northern Mariana Islands (CNMI)? ☐ Yes ☒ No

7. Is this a full-time position? ☒ Yes ☐ No

8. If the answer to **Item Number 7.** is no, how many hours per week for the position? ▶

9. Wages: $ 48000.00 per (Specify hour, week, month, or year) ▶ year

10. Other Compensation (Explain)

Standard benefits

11. Dates of intended employment From: (mm/dd/yyyy) 10/01/2018 To: (mm/dd/yyyy) 09/10/2021

12. Type of Business

Printing and marketing company

13. Year Established

1975

14. Current Number of Employees in the United States

62

15. Gross Annual Income

See attached

16. Net Annual Income

See attached

Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

(This section of the form is required only for H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions. It is not required for any other classifications. Please review the Form I-129 General Filing Instructions before completing this section.)

Select Item Number 1. or Item Number 2. as appropriate. DO NOT select both boxes.

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

1. ☒ A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

2. ☐ A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

Part 7. Declaration, Signature, and Contact Information of Petitioner or Authorized Signatory (Read the information on penalties in the instructions before completing this section.)

Copies of any documents submitted are exact photocopies of unaltered, original documents, and I understand that, as the petitioner, I may be required to submit original documents to U.S. Citizenship and Immigration Services (USCIS) at a later date.

I authorize the release of any information from my records, or from the petitioning organization's records that USCIS needs to determine eligibility for the immigration benefit sought. I recognize the authority of USCIS to conduct audits of this petition using publicly available open source information. I also recognize that any supporting evidence submitted in support of this petition may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews.

If filing this petition on behalf of an organization, I certify that I am authorized to do so by the organization.

I certify, under penalty of perjury, that I have reviewed this petition and that all of the information contained in the petition, including all responses to specific questions, and in the supporting documents, is complete, true, and correct.

1. **Name and Title of Authorized Signatory**

Family Name (Last Name): Williams

Given Name (First Name): Autumn

Title: Accounting Manager

2. **Signature and Date**

Signature of Authorized Signatory: Autumn Williams

Date of Signature (mm/dd/yyyy): 03/27/2018

3. **Signatory's Contact Information**

Daytime Telephone Number: 501-210-2557

Email Address (if any): [redacted]

NOTE: If you do not fully complete this form or fail to submit the required documents listed in the instructions, a final decision on your petition may be delayed or the petition may be denied.

Part 8. Declaration, Signature, and Contact Information of Person Preparing Form, If Other Than Petitioner

Provide the following information concerning the preparer:

1. **Name of Preparer**

Family Name (Last Name): Borkowski

Given Name (First Name): Misty Wilson

2. **Preparer's Business or Organization Name** (if any)

(If applicable, provide the name of your accredited organization recognized by the Board of Immigration Appeals (BIA).)

Cross, Gunter, Witherspoon & Galchus, P.C.

Part 8. Declaration, Signature, and Contact Information of Person Preparing Form, If Other Than Petitioner (continued)

3. Preparer's Mailing Address

Street Number and Name	Apt.	Ste.	Flr.	Number
500 President Clinton Avenue	☐	☒	☐	200

City or Town	State	ZIP Code
Little Rock	AR	72201

Province	Postal Code	Country
		United States

4. Preparer's Contact Information

Daytime Telephone Number	Fax Number	Email Address (if any)
501-371-9999	501-371-0035	mborkowski@cgwg.com

Preparer's Declaration

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this petition on behalf of, at the request of, and with the express consent of the petitioner or authorized signatory. The petitioner has reviewed this completed petition as prepared by me and informed me that all of the information in the form and in the supporting documents, is complete, true, and correct.

5. Signature and Date

Signature of Preparer: Mw Borkowski

Date of Signature (mm/dd/yyyy): 03/28/2018

Part 9. Additional Information About Your Petition For Nonimmigrant Worker

If you require more space to provide any additional information within this petition, use the space below. If you require more space than what is provided to complete this petition, you may make a copy of **Part 9.** to complete and file with this petition. In order to assist us in reviewing your response, you must identify the **Page Number, Part Number and Item Number** corresponding to the additional information.

1. A-Number ► **A-**

2. **Page Number** **Part Number** **Item Number**

N/A

3. **Page Number** **Part Number** **Item Number**

N/A

4. **Page Number** **Part Number** **Item Number**

N/A

H Classification Supplement to Form I-129

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

Magna IV Color Imaging, Inc.

Name of the beneficiary or if this petition includes multiple beneficiaries, the total number of beneficiaries

2.a. Name of the Beneficiary

Jiaqi Zhao

OR

2.b. Provide the total number of beneficiaries

3. List each beneficiary's prior periods of stay in H or L classification in the United States for the last six years (beneficiaries requesting H-2A or H-2B classification need only list the last three years). Be sure to only list those periods in which each beneficiary was actually in the United States in an H or L classification. Do not include periods in which the beneficiary was in a dependent status, for example, H-4 or L-2 status.

NOTE: Submit photocopies of Forms I-94, I-797, and/or other USCIS issued documents noting these periods of stay in the H or L classification. (If more space is needed, attach an additional sheet.)

Subject's Name	Period of Stay (mm/dd/yyyy) From	To
N/A		

4. Classification sought (select **only one** box):

- [x] **a.** H-1B Specialty Occupation
- [ ] **b.** H-1B1 Chile and Singapore
- [ ] **c.** H-1B2 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense (DOD)
- [ ] **d.** H-1B3 Fashion model of distinguished merit and ability
- [ ] **e.** H-2A Agricultural worker
- [ ] **f.** H-2B Non-agricultural worker
- [ ] **g.** H-3 Trainee
- [ ] **h.** H-3 Special education exchange visitor program

5. Are you filing this petition on behalf of a beneficiary subject to the Guam-CNMI cap exemption under Public Law 110-229?

[ ] Yes [x] No

6. Are you requesting a change of employer and was the beneficiary previously subject to the Guam-CNMI cap exemption under Public Law 110-229?

[ ] Yes [x] No

7.a. Does any beneficiary in this petition have ownership interest in the petitioning organization?

[ ] Yes. If yes, please explain in **Item Number 7.b.** [x] No

7.b. Explanation

Section 1. Complete This Section If Filing for H-1B Classification

1. Describe the proposed duties.

See the attached Employer Support Letter.

2. Describe the beneficiary's present occupation and summary of prior work experience.

See the attached Employer Support Letter, Beneficiary's C.V., and education documentation.

Statement for H-1B Specialty Occupations and H-1B1 Chile and Singapore

By filing this petition, I agree to, and will abide by, the terms of the labor condition application (LCA) for the duration of the beneficiary's authorized period of stay for H-1B employment. I certify that I will maintain a valid employer-employee relationship with the beneficiary at all times. If the beneficiary is assigned to a position in a new location, I will obtain and post an LCA for that site prior to reassignment.

I further understand that I cannot charge the beneficiary the ACWIA fee, and that any other required reimbursement will be considered an offset against wages and benefits paid relative to the LCA.

Signature of Petitioner	Name of Petitioner	Date (mm/dd/yyyy)
Autumn Williams	Magna IV Color Imaging, Inc.	03/27/2018

Statement for H-1B Specialty Occupations and U.S. Department of Defense (DOD) Projects

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay.

Signature of Authorized Official of Employer	Name of Authorized Official of Employer	Date (mm/dd/yyyy)
Autumn Williams	Autumn Williams	03/27/2018

Statement for H-1B U.S. Department of Defense Projects Only

I certify that the beneficiary will be working on a cooperative research and development project or a co-production project under a reciprocal government-to-government agreement administered by the U.S. Department of Defense.

Signature of DOD Project Manager	Name of DOD Project Manager	Date (mm/dd/yyyy)

Section 2. Complete This Section If Filing for H-2A or H-2B Classification

1. Employment is: (select **only one** box)

☐ a. Seasonal ☐ b. Peak load ☐ c. Intermittent ☐ d. One-time occurrence

2. Temporary need is: (select **only one** box)

☐ a. Unpredictable ☐ b. Periodic ☐ c. Recurrent annually

H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

Magna IV Color Imaging, Inc.

2. Name of the Beneficiary

Jiaqi Zhao

Section 1. General Information

1. **Employer Information** - (select all items that apply)

a. Is the petitioner an H-1B dependent employer? ☐ Yes ☒ No

b. Has the petitioner ever been found to be a willful violator? ☐ Yes ☒ No

c. Is the beneficiary an H-1B nonimmigrant exempt from the Department of Labor attestation requirements? ☐ Yes ☒ No

c.1. If yes, is it because the beneficiary's annual rate of pay is equal to at least $60,000? ☐ Yes ☐ No

c.2. Or is it because the beneficiary has a master's degree or higher degree in a specialty related to the employment? ☐ Yes ☐ No

d. Does the petitioner employ 50 or more individuals in the United States? ☒ Yes ☐ No

d.1. If yes, are more than 50 percent of those employees in H-1B, L-1A, or L-1B nonimmigrant status? ☐ Yes ☒ No

2. **Beneficiary's Highest Level of Education** (select **only one** box)

☐ a. NO DIPLOMA

☐ b. HIGH SCHOOL GRADUATE DIPLOMA or the equivalent (for example: GED)

☐ c. Some college credit, but less than 1 year

☐ d. One or more years of college, no degree

☐ e. Associate's degree (for example: AA, AS)

☒ f. Bachelor's degree (for example: BA, AB, BS)

☐ g. Master's degree (for example: MA, MS, MEng, MEd, MSW, MBA)

☐ h. Professional degree (for example: MD, DDS, DVM, LLB, JD)

☐ i. Doctorate degree (for example: PhD, EdD)

3. Major/Primary Field of Study

Bachelor of Science (Computer Science)

4. Rate of Pay Per Year

48000.00

5. DOT Code

0 3 0

6. NAICS Code

[redacted]

Section 2. Fee Exemption and/or Determination

In order for USCIS to determine if you must pay the additional **$1,500** or **$750** American Competitiveness and Workforce Improvement Act (ACWIA) fee, answer all of the following questions:

1. Are you an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965, 20 U.S.C. 1001(a)? ☐ Yes ☒ No

2. Are you a nonprofit organization or entity related to or affiliated with an institution of higher education, as defined in 8 CFR 214.2(h)(19)(iii)(B)? ☐ Yes ☒ No

Section 2. Fee Exemption and/or Determination (continued)

3. Are you a nonprofit research organization or a governmental research organization, as defined in 8 CFR 214.2(h)(19)(iii)(C)? ☐ Yes ☒ No

4. Is this the second or subsequent request for an extension of stay that this petitioner has filed for this alien? ☐ Yes ☒ No

5. Is this an amended petition that does not contain any request for extensions of stay? ☐ Yes ☒ No

6. Are you filing this petition to correct a USCIS error? ☐ Yes ☒ No

7. Is the petitioner a primary or secondary education institution? ☐ Yes ☒ No

8. Is the petitioner a nonprofit entity that engages in an established curriculum-related clinical training of students registered at such an institution? ☐ Yes ☒ No

If you answered yes to any of the questions above, you are not required to submit the ACWIA fee for your H-1B Form I-129 petition. If you answered no to all questions, answer **Item Number 9.** below.

9. Do you currently employ a total of 25 or fewer full-time equivalent employees in the United States, including all affiliates or subsidiaries of this company/organization? ☐ Yes ☒ No

If you answered yes, to **Item Number 9.** above, you are required to pay an additional ACWIA fee of **$750**. If you answered no, then you are required to pay an additional ACWIA fee of **$1,500**.

NOTE: A petitioner seeking initial approval of H-1B nonimmigrant status for a beneficiary, or seeking approval to employ an H-1B nonimmigrant currently working for another employer, must submit an additional **$500** Fraud Prevention and Detection fee. For petitions filed on or after December 18, 2015, an additional fee of **$4,000** must be submitted if you responded yes to **Item Numbers 1.d. and 1.d.1. of Section 1.** of this supplement. This **$4,000** fee was mandated by the provisions of Public Law 114-113.

The Fraud Prevention and Detection Fee and Public Law 114-113 fee do not apply to H-1B1 petitions. **These fees, when applicable, may not be waived.** You must include payment of the fees when you submit this form. Failure to submit the fees when required will result in rejection or denial of your submission. Each of these fees should be paid by separate checks or money orders.

Section 3. Numerical Limitation Information

1. Specify the type of H-1B petition you are filing. (select **only one** box):

   ☒ **a.** CAP H-1B Bachelor's Degree
   ☐ **b.** CAP H-1B U.S. Master's Degree or Higher
   ☐ **c.** CAP H-1B1 Chile/Singapore
   ☐ **d.** CAP Exempt

2. If you answered **Item Number 1.b. "CAP H-1B U.S. Master's Degree or Higher,"** provide the following information regarding the master's or higher degree the beneficiary has earned from a U.S. institution as defined in 20 U.S.C. 1001(a):

   a. Name of the United States Institution of Higher Education

   b. Date Degree Awarded

   c. Type of United States Degree

   d. Address of the United States institution of higher education

   Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ Number

   City or Town | State | ZIP Code

Section 3. Numerical Limitation Information (continued)

3. If you answered **Item Number 1.d. "CAP Exempt,"** you must specify the reason(s) this petition is exempt from the numerical limitation for H-1B classification:

- ☐ **a.** The petitioner is an institution of higher education as defined in section 101(a) of the Higher Education Act, of 1965, 20 U.S.C. 1001(a).
- ☐ **b.** The petitioner is a nonprofit entity related to or affiliated with an institution of higher education as defined in 8 CFR 214.2(h)(8)(ii)(F)(2).
- ☐ **c.** The petitioner is a nonprofit research organization or a governmental research organization as defined in 8 CFR 214.2(h)(8)(ii)(F)(3).
- ☐ **d.** The beneficiary will be employed at a qualifying cap exempt institution, organization or entity pursuant to 8 CFR 214.2(h)(8)(ii)(F)(4).
- ☐ **e.** The petitioner is requesting an amendment to or extension of stay for the beneficiary's current H-1B classification.
- ☐ **f.** The beneficiary of this petition is a J-1 nonimmigrant physician who has received a waiver based on section 214(l) of the Act.
- ☐ **g.** The beneficiary of this petition has been counted against the cap and **(1)** is applying for the remaining portion of the 6 year period of admission, or **(2)** is seeking an extension beyond the 6-year limitation based upon sections 104(c) or 106(a) of the American Competitiveness in the Twenty-First Century Act (AC21).
- ☐ **h.** The petitioner is an employer subject to the Guam-CNMI cap exemption pursuant to Public Law 110-229.

Section 4. Off-Site Assignment of H-1B Beneficiaries

1. The beneficiary of this petition will be assigned to work at an off-site location for all or part of the period for which H-1B classification sought. ☐ Yes ☒ No

   If no, do not complete **Item Numbers 2.** and **3.**

2. Placement of the beneficiary off-site during the period of employment will comply with the statutory and regulatory requirements of the H-1B nonimmigrant classification. ☐ Yes ☐ No

3. The beneficiary will be paid the higher of the prevailing or actual wage at any and all off-site locations. ☐ Yes ☐ No

OMB Approval: 1205-0310
Expiration Date: 05/31/2018

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor

Electronic Filing of Labor Condition Applications For The H-1B Nonimmigrant Visa Program

This Department of Labor, Employment and Training Administration (ETA), electronic filing system enables an employer to file a Labor Condition Application (LCA) and obtain certification of the LCA. This Form must be submitted by the employer or by someone authorized to act on behalf of the employer.

A) I understand and agree that, upon my receipt of ETA's certification of the LCA by electronic response to my submission, I must take the following actions at the specified times and circumstances:

- print and sign a hardcopy of the electronically filed and certified LCA;
- maintain a signed hardcopy of this LCA in my public access files;
- submit a signed hardcopy of the LCA to the United States Citizenship and Immigration Services (USCIS) in support of the I-129, on the date of submission of the I-129;
- provide a signed hardcopy of this LCA to each H-1B nonimmigrant who is employed pursuant to the LCA.

☑ Yes ☐ No

B) I understand and agree that, by filing the LCA electronically, I attest that all of the statements in the LCA are true and accurate and that I am undertaking all the obligations that are set out in the LCA (Form ETA 9035E) and the accompanying instructions (Form ETA 9035CP).

☑ Yes ☐ No

C) I hereby choose one of the following options, with regard to the accompanying instructions:

☐ I choose to have the Form ETA 9035CP electronically attached to the certified LCA, and to be bound by the LCA obligations as explained in this form

☑ I choose not to have the Form ETA 9035CP electronically attached to the certified LCA, but I have read the instructions and I understand that I am bound by the LCA obligations as explained in this form

Case Number: I-200-18052-579974 Case Status: CERTIFIED Period of Employment: 09/11/2018 to 09/10/2021

OMB Approval: 1205-0310
Expiration Date: 05/31/2018

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor

Please read and review the filing instructions carefully before completing the ETA Form 9035 or 9035E. A copy of the instructions can be found at http://www.foreignlaborcert.doleta.gov/. In accordance with Federal Regulations at 20 CFR 655.730(b), incomplete or obviously inaccurate Labor Condition Applications (LCAs) will not be certified by the Department of Labor. If the employer has received permission from the Administrator of the Office of Foreign Labor Certification to submit this form non-electronically, ALL required fields/items containing an asterisk (*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application *(Write classification symbol)*: *	H-1B

B. Temporary Need Information

1. Job Title * COMPUTER PROGRAMMER		
2. SOC (ONET/OES) code * 15-1131	3. SOC (ONET/OES) occupation title * COMPUTER PROGRAMMERS	
4. Is this a full-time position? * ☑ Yes ☐ No	**Period of Intended Employment**	
	5. Begin Date * (mm/dd/yyyy) 09/11/2018	6. End Date * (mm/dd/yyyy) 09/10/2021

7. Worker positions needed/basis for the visa classification supported by this application

1 **Total Worker Positions Being Requested for Certification ***

Basis for the visa classification supported by this application
(*Indicate the total workers in each applicable category based on the total workers identified above*)

1	a. New employment *	0	d. New concurrent employment *
0	b. Continuation of previously approved employment * without change with the same employer	0	e. Change in employer *
0	c. Change in previously approved employment *	0	f. Amended petition *

C. Employer Information

1. Legal business name * MAGNA IV COLOR IMAGING, INC.		
2. Trade name/Doing Business As (DBA), if applicable N/A		
3. Address 1 * 2401 COMMERCIAL LANE		
4. Address 2 SUITE 200		
5. City * LITTLE ROCK	6. State * AR	7. Postal code * 72206
8. Country * UNITED STATES OF AMERICA	9. Province N/A	
10. Telephone number * 5013762397	11. Extension N/A	
12. Federal Employer Identification Number (FEIN from IRS) * [redacted]	13. NAICS code (must be at least 4-digits) * [redacted]	

OMB Approval: 1205-0310
Expiration Date: 05/31/2018

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor

D. Employer Point of Contact Information

Important Note: The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer.

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
WILLIAMS	AUTUMN	N/A
4. Contact's job title * ACCOUNTING MANAGER		
5. Address 1 * 2401 COMMERCIAL LANE		
6. Address 2 SUITE 200		
7. City * LITTLE ROCK	8. State * AR	9. Postal code * 72206
10. Country * UNITED STATES OF AMERICA	11. Province N/A	
12. Telephone number * 5013762397	13. Extension N/A	14. E-Mail address [redacted]

E. Attorney or Agent Information (If applicable)

1. Is the employer represented by an attorney or agent in the filing of this application? * If "Yes", complete the remainder of Section E below.	☑ Yes ☐ No

2. Attorney or Agent's last (family) name §	3. First (given) name §	4. Middle name(s) §
BORKOWSKI	MISTY	WILSON
5. Address 1 § 500 PRESIDENT CLINTON AVE., SUITE 200		
6. Address 2 N/A		
7. City § LITTLE ROCK	8. State § AR	9. Postal code § 72201
10. Country § UNITED STATES OF AMERICA	11. Province N/A	
12. Telephone number § 5013719999	13. Extension N/A	14. E-Mail address MBORKOWSKI@CGWG.COM
15. Law firm/Business name § CROSS, GUNTER, WITHERSPOON & GALCHUS, P.C.	16. Law firm/Business FEIN § [redacted]	
17. State Bar number (only if attorney) § 97004	18. State of highest court where attorney is in good standing (only if attorney) § AR	
19. Name of the highest court where attorney is in good standing (only if attorney) § SUPREME COURT OF ARKANSAS		

OMB Approval: 1205-0310
Expiration Date: 05/31/2018

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor

F. Rate of Pay

1. Wage Rate (Required)	2. Per: (Choose only one) *
From: $ 48000.00 * To: $ N/A	☐ Hour ☐ Week ☐ Bi-Weekly ☐ Month ☑ Year

G. Employment and Prevailing Wage Information

Important Note: It is important for the employer to define the place of intended employment with as much geographic specificity as possible. The place of employment address listed below must be a physical location and cannot be a P.O. Box. The employer may use this section to identify up to three (3) physical locations and corresponding prevailing wages covering each location where work will be performed and the electronic system will accept up to 3 physical locations and prevailing wage information. If the employer has received approval from the Department of Labor to submit this form non-electronically and the work is expected to be performed in more than one location, an attachment must be submitted in order to complete this section.

a. Place of Employment 1

1. Address 1 * 2401 COMMERCIAL LANE	
2. Address 2 SUITE 200	
3. City * LITTLE ROCK	4. County * PULASKI
5. State/District/Territory * AR	6. Postal code * 72206

Prevailing Wage Information *(corresponding to the place of employment location listed above)*

7. Agency which issued prevailing wage § N/A	7a. Prevailing wage tracking number (if applicable) § N/A
8. Wage level * ☑ I ☐ II ☐ III ☐ IV ☐ N/A	
9. Prevailing wage * $ 47840.00	10. Per: (Choose only one) * ☐ Hour ☐ Week ☐ Bi-Weekly ☐ Month ☑ Year
11. Prevailing wage source (Choose only one) * ☐ OES ☐ CBA ☐ DBA ☐ SCA ☑ Other	
11a. Year source published * 2017	11b. If "OES", and SWA/NPC did not issue prevailing wage **OR** "Other" in question 11, specify source § OFLC ONLINE DATA CENTER

H. Employer Labor Condition Statements

! ***Important Note:*** In order for your application to be processed, you MUST read Section H of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading "Employer Labor Condition Statements" and agree to all four (4) labor condition statements summarized below:

(1) **Wages:** Pay nonimmigrants at least the local prevailing wage or the employer's actual wage, whichever is higher, and pay for non-productive time. Offer nonimmigrants benefits on the same basis as offered to U.S. workers.
(2) **Working Conditions:** Provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed.
(3) **Strike, Lockout, or Work Stoppage:** There is no strike, lockout, or work stoppage in the named occupation at the place of employment.
(4) **Notice:** Notice to union or to workers has been or will be provided in the named occupation at the place of employment. A copy of this form will be provided to each nonimmigrant worker employed pursuant to the application.

1. I have read and agree to Labor Condition Statements 1, 2, 3, and 4 above and as fully explained in Section H of the Labor Condition Application – General Instructions – Form ETA 9035CP. *	☑ Yes ☐ No

OMB Approval: 1205-0310
Expiration Date 05/31/2018

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor

I. Additional Employer Labor Condition Statements – H-1B Employers ONLY

! **Important Note**: In order for your H-1B application to be processed, you MUST read Section I – Subsection 1 of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading "Additional Employer Labor Condition Statements" and answer the questions below.

a. Subsection 1

1. Is the employer H-1B dependent? §	☐ Yes ☑ No
2. Is the employer a willful violator? §	☐ Yes ☑ No
3. If "Yes" is marked in questions I.1 and/or I.2, you must answer "Yes" or "No" regarding whether the employer will use this application ONLY to support H-1B petitions or extensions of status for exempt H-1B nonimmigrants? §	☐ Yes ☐ No ☑ N/A

If you marked "Yes" to questions I.1 and/or I.2 and "No" to question I.3, you MUST read Section I – Subsection 2 of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading "Additional Employer Labor Condition Statements" and indicate your agreement to all three (3) additional statements summarized below.

b. Subsection 2

A. **Displacement:** Non-displacement of the U.S. workers in the employer's workforce
B. **Secondary Displacement:** Non-displacement of U.S. workers in another employer's workforce; and
C. **Recruitment and Hiring:** Recruitment of U.S. workers and hiring of U.S. workers applicant(s) who are equally or better qualified than the H-1B nonimmigrant(s).

4. I have read and agree to Additional Employer Labor Condition Statements A, B, and C above and as fully explained in Section I – Subsections 1 and 2 of the Labor Condition Application – General Instructions Form ETA 9035CP. §	☐ Yes ☐ No

J. Public Disclosure Information

! **Important Note**: You must select from the options listed in this Section.

1. Public disclosure information will be kept at: *	☑ Employer's principal place of business ☐ Place of employment

K. Declaration of Employer

By signing this form, I, on behalf of the employer, attest that the information and labor condition statements provided are true and accurate; that I have read sections H and I of the Labor Condition Application – General Instructions Form ETA 9035CP, and that I agree to comply with the Labor Condition Statements as set forth in the Labor Condition Application – General Instructions Form ETA 9035CP and with the Department of Labor regulations (20 CFR part 655, Subparts H and I). I agree to make this application, supporting documentation, and other records available to officials of the Department of Labor upon request during any investigation under the Immigration and Nationality Act. Making fraudulent representations on this Form can lead to civil or criminal action under 18 U.S.C. 1001, 18 U.S.C. 1546, or other provisions of law.

1. Last (family) name of hiring or designated official *	2. First (given) name of hiring or designated official *	3. Middle initial *
WILLIAMS	AUTUMN	N/A
4. Hiring or designated official title *		
ACCOUNTING MANAGER		
5. Signature *	6. Date signed *	
Autumn Williams	03/27/2018	

OMB Approval: 1205-0310
Expiration Date: 05/31/2018

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor

L. LCA Preparer

Important Note: Complete this section if the preparer of this LCA is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application.

1. Last (family) name §	2. First (given) name §	3. Middle initial §
N/A	N/A	N/A
4. Firm/Business name § N/A		
5. E-Mail address § N/A		

M. U.S. Government Agency Use (ONLY)

By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is valid from 09/11/2018 to 09/10/2021.

Department of Labor, Office of Foreign Labor Certification

03/16/2018
Determination Date (date signed)

I-200-18052-579974
Case number

CERTIFIED
Case Status

The Department of Labor is not the guarantor of the accuracy, truthfulness, or adequacy of a certified LCA.

N. Signature Notification and Complaints

The signatures and dates signed on this form will not be filled out when electronically submitting to the Department of Labor for processing, but **MUST** be complete when submitting non-electronically. If the application is submitted electronically, any resulting certification **MUST** be signed *immediately upon receipt* from the Department of Labor before it can be submitted to USCIS for further processing.

Complaints alleging misrepresentation of material facts in the LCA and/or failure to comply with the terms of the LCA may be filed using the WH-4 Form with any office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. A listing of the Wage and Hour Division offices can be obtained at http://www.dol.gov/esa. Complaints alleging failure to offer employment to an equally or better qualified U.S. worker, or an employer's misrepresentation regarding such offer(s) of employment, may be filed with the U.S. Department of Justice, Office of the Special Counsel for Immigration-Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW, Washington, DC, 20530. Please note that complaints should be filed with the Office of Special Counsel at the Department of Justice only if the violation is by an employer who is H-1B dependent or a willful violator as defined in 20 CFR 655.710(b) and 655.734(a)(1)(ii).

O. OMB Paperwork Reduction Act *(1205-0310)*

These reporting instructions have been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to reply are mandatory (Immigration and Nationality Act, Section 212(n) and (t) and 214(c). Public reporting burden for this collection of information, which is to assist with program management and to meet Congressional and statutory requirements is estimated to average 1 hour per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Room C-4312, 200 Constitution Ave. NW, Washington, DC 20210. (Paperwork Reduction Project OMB 1205-0310.) **Do NOT send the completed application to this address.**

MAGNA IV
Printing Solutions Simplified

March 30, 2018

USCIS – Vermont Service Center
ATTN: H-1B Cap
4 Lemnah Drive
St. Albans, VT 05479-0001

Re: I-129 Petition (H-1B Cap)
Petitioner: MAGNA IV Color Imaging, Inc.
Beneficiary: Jiaqi Zhao

Dear Sir/Madam:

Please find enclosed our I-129 petition on behalf of MAGNA IV Color Imaging, Inc., a printing and marketing firm, for an H-1B visa status for Jiaqi Zhao, a citizen of China, as a nonimmigrant of distinguished merit and abilities in a specialty occupation. MAGNA IV Color Imaging, Inc. wishes to employ Mr. Zhao as a Computer Programmer on a temporary basis. The intended period of employment is three (3) years.

THE PETITIONER

MAGNA IV Color Imaging, Inc. ("MAGNA IV") has been in business since 1975 and has prided itself on forward thinking to skillfully blend the latest technological advances with highly trained and passionate people. This mindset has allowed MAGNA IV to successfully evolve from its humble beginnings to become a leading print and marketing company in the mid-South—serving diverse clients from coast to coast.

For more than 40 years now, MAGNA IV has built a winning reputation among corporations, non-profits, restaurants, retailers, higher education institutions, manufacturers, advertising agencies, and graphic designers. MAGNA IV strives to exceed customers' expectations by providing them the expertise and high-quality print and marketing products their businesses need to succeed. It handles every detail—from design to production—so customers can focus on what they do best.

At MAGNA IV, all the work is produced in-house, under "one roof". Indeed, its staff has the technical expertise to meet any client's specific needs, whether it is setting up an online marketing portal to manage customers' brand collateral or creating a multi-channel marketing campaign to drive engagement among key audiences. MAGNA IV has the expertise to meet any client's needs. MAGNA IV's facility is equipped to handle any type of printing service—digital, offset, wide format, variable data—as well as fulfillment and mailing services. In order to provide excellent and advanced services to its clients, MAGNA IV relies on highly qualified and motivated computer programmers.

JOB DUTIES

MAGNA IV Color Imaging, Inc. wishes to employ Mr. Zhao as a Computer Programmer. In this full-time position, he will be primarily responsible for the development of Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development. He will write [redacted] and add functionality to the [redacted] in addition to writing scripts for [redacted] for changing or improving workflow. Some of the varied duties of the position include, but are not limited to, the following:

- Manage Mindfire Campaigns in building html pages for cross-media projects;
- Assist in developing, supporting and extending web storefronts powered by Pageflex, PrestaShop and Wordpress;
- Build Studio templates for customizable or static items and general site maintenance;
- Site skinning, report building and database implementation;
- Collaborate with departments to streamline the workflow between systems;
- Interact with other personnel in solving complex business and technical problems;
- Work with scratch coding in PHP, MySQL;
- Work with projects involving Angularjs, nodejs, mongodb, C#, Javascript;
- Write query to select data and also modify data from SQL database;
- Work with terminal Windows and Linux servers.

This position of Computer Programmer falls under the SOC Code 15-1131, "Computer Programmers". According to O*Net Online, most of these occupations require a four-year bachelor's degree, but some do not; however, a considerable amount of work-related skill, knowledge, or experience is needed for these occupations. The position at Magna IV requires that the employee have experience with HTML, CSS, Javascript, C#, SQL, .Net, PHP, and Object oriented programing. Due to the complexity of the duties assigned, MAGNA IV unequivocally states that the position is a professional level – special occupation that requires an individual with sufficient education and experience. Indeed, the position requires that the individual have a minimum of a Bachelor's degree in Computer Science, or a closely-related field.

DESCRIPTION OF BENEFICIARY AND QUALIFICATIONS FOR THE POSITION OFFERED

Mr. Jiaqi Zhao graduated in 2017 with a Bachelor of Science in Computer Science from the University of Central Arkansas in Conway, Arkansas. He has worked for the Petitioner since July 2017 as a Computer Programmer. Please see Mr. Zhao's curriculum vitae for additional details relating to prior employment.

Mr. Zhao meets all of the requirements for employment with MAGNA IV Color Imaging, Inc., and all of the requirements for H-1B specialty occupation visa.

TERMS OF EMPLOYMENT

MAGNA IV Color Imaging, Inc. wishes to employ Mr. Zhao as a Computer Programmer. His base salary in this full-time position will be $48,000.00 per year. MAGNA IV Color Imaging, Inc. understands that this is a petition for temporary employment in the United States and agrees to provide Mr. Zhao with reasonable transportation costs abroad should he be dismissed prior to the proposed duration of employment as stated in the H-1B visa petition. Further, MAGNA IV Color Imaging, Inc. agrees to abide by the terms and conditions of the Labor Condition Application.

MAGNA IV Color Imaging, Inc. respectfully requests that you process its petition on behalf of Mr. Zhao as expeditiously as possible.

For reference, O*Net online:
https://www.onetonline.org/link/summary/15-1131.00

Sincerely,

Autumn Williams

Autumn Williams
Accounting Manager



UNIVERSITY OF
CENTRAL
ARKANSAS

March 26, 2018

To whom it may concern,

According to MAGNA IV Color Imaging, Inc.'s Job Duties Description pertaining to the Computer Programmer, a minimum of a Bachelor's Degree in Computer Science is required in order to perform the corresponding responsibilities. I am hereby discussing the appropriate educational requirements of this Computer Programmer position. The Bureau of Labor Statistics, a unit of the United States Department of Labor, published the Occupational Outlook Handbook (OOH). OOH describes the Computer Programmer position as a more advanced and specialized role. The responsibilities of the Computer Programmer have been documented in OOH as allowing computer applications and software programs to function properly, and working with code. This description emphasizes the need of greater Computer Science knowledge for this position. The greater knowledge includes knowledge related to not just applications, software, coding, but possibly other Computer Science areas such as data and web development. OOH states that the typical entry-level education is a Bachelor's Degree. It is clear that such a high level job needs technical knowledge and skills gained from a Bachelor's Degree in Computer Science.

This opinion letter is written based on my experiences as a Professor and the Chair of the Department of Computer Science at the University of Central Arkansas. As the Department Chair, I am familiar with the course setting and the learning objectives of our Computer Science program which leads to a Bachelor's Degree. Having taught a variety of Computer Science courses for nearly 12 years, I have a clear understanding of the depth of skills gained by students who pursue their Bachelor's Degrees in Computer Science, and how the skills relate to specific job duties. During my career in Computer Science, I have cultivated a specialization in image processing/analysis and data mining with an emphasis on medical image analysis, color image processing, and partitional clustering. I have conducted research related to the aforementioned Computer Science subfields.

Computer Science is a dynamic and ever changing field. Every day, new software is developed; new research in different fields is completed; new technology ideas are generated etc. The coursework involved in earning a Bachelor's Degree in Computer Science not only provides students with the technical and professional abilities which are important for them at work, but also trains students to be able to adapt to the fast developing Computer Science world, and always be capable of performing the duties required in IT-related jobs. In our Computer Science program, "Principles of Programming Languages" course teaches students ways of learning languages, which guarantees that students will have the ability of learning languages on their own. In my opinion, it is essential for students to master this skill, in order to keep up with the fast developing programming fields. "Software Engineering" course provides students the freedom of designing their own object-oriented programming projects. The abilities of designing and implementing projects are definitely necessary prerequisites

[redacted]

for a Computer Programmer. It is helpful for students to have an idea about how to develop new projects in this dynamic and ever changing field. The knowledge acquired in a minimum of Bachelor's Degree in Computer Science is irreplaceable with any lower level education, because of the fact that it prepares the students so well in adapting to the development of Computer Science field.

Not only demonstrated by the detailed job duties listed by MAGNA IV Color Imaging, Inc., but also evidenced in the professional level work that is being completed by the employee, Mr. Jiaqi Zhao, a minimum of a Bachelor's Degree in Computer Science is necessary for this position. Specifically, requirements of the advanced skills can be found in the job requirements description: "Technical experiences required: HTML, CSS, JavaScript, C#, SQL, .Net, PHP, and Object-oriented programming." The knowledge listed is widely used in the development of advanced software. As mentioned in OOH, through a Computer Science Degree, students can obtain the skills which are needed in order to learn computer languages effectively. Computer Programmer needs to be able to program in various languages, and a Computer Science Degree benefits the position by providing both technical skills and ways of maximizing efficiency.

Looking into the knowledge which the Computer Programmer at MAGNA IV Color Imaging, Inc. entails on a daily basis, I found that this position is a specialty occupation. The application of specialized technical knowledge is indispensable in order to be able to finish the required work. Mr. Jiaqi Zhao is completing professional level work on the Computer Programmer position. The processes of understanding, designing, developing, implementing, documenting, and managing software-related projects are involved in the duties of this Computer Programmer position. The position also requires the abilities of ensuring applications and programs meet the company's operational and strategic demands. The analytical and technical skills which are necessary for the tasks stated above require higher level education. The well-rounded training which a Bachelor's Degree provides cannot be substituted by a lower level education. The job responsibilities need to be performed with the assistance of more advanced knowledge. The following are selected examples: "Manage Mindfire Campaigns in building HTML pages for cross-media projects; assist in developing, supporting and extending web storefronts power by Pageflex, PrestaShop and Wordpress; work with projects involving AngularJS, Node.js, MongoDB, C#, JavaScript, and SQL." The programming languages and tools mentioned above are advanced and require proficient technical skills for one to be able to utilize them correctly. Mr. Jiaqi Zhao has received corresponding training regarding programming languages such as JavaScript and SQL in his degree, and he has gained a reasonably complete understanding of how to learn to use different software in our Bachelor of Science program. Starting from the very first course "Computer Science I" in the program, almost every course gives students the opportunities of learning to develop software. I believe what he gained from his Bachelor of Science Degree in Computer Science is an important element which helps him to perform the job duties well.

The aforementioned technical skills requirements and job duties are consistent with a specialty Computer Science related occupation. The in-depth programming and analysis abilities, which I believe will assist the position the most, are the important knowledge gained from a minimum of a Bachelor's Degree in Computer Science. During his completion of the Bachelor's Degree in Computer Science, Mr. Jiaqi Zhao has acquired various programming knowledge in languages such as HTML, CSS, JavaScript and in object-oriented programming. When taking the graduate-level "Web Technology" course, Mr. Jiaqi Zhao developed a website with PHP and HTML, which are two essential technical skills which the proffered Computer Programmer position need to have. Mr. Jiaqi Zhao completed software development projects with object-oriented programming in Java, C++, SQL and other programming languages. However, proficient programming skills are not the only knowledge Mr. Jiaqi Zhao

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learned from his Bachelor's Degree. Mr. Jiaqi Zhao acquired important team working, communication, data modeling, query developing, database building, and other professional skills from his degree. Referring to the Job Duties Description, the skills described above are either necessary or extremely helpful for one to be qualified to perform the duties for the proffered Computer Programmer position. Therefore, a minimum of a Bachelor's Degree in Computer Science is required for this position.

From my perspective, the Computer Programmer position in the Job Duties Description is an advanced programming related position in Computer Science. Because of its focuses on sophisticated projects, and its needs of different technical abilities, higher level education is indispensable. The knowledge which is utilized in this position is a theoretical and practical application of what Mr. Jiaqi Zhao has acquired in his Bachelor of Science Degree from University of Central Arkansas. In another words, the Computer Programmer position under consideration is an advanced position, and the requirement of a Bachelor's Degree in Computer Science at a minimum, as discussed above, is necessary.

For reference, OOH:

https://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-1

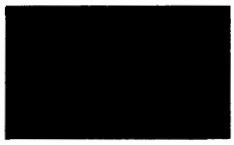
Sincerely,

Dr. Emre Celebi, Ph.D.
Professor and Chair
Department of Computer Science
College of Natural Sciences and Mathematics
University of Central Arkansas

[redacted]

M. Emre Celebi

Professor and Chair



Education

2003–2006 **Ph.D. in Computer Science and Engineering**, *University of Texas*, Arlington, TX.
Dissertation Title: *Development of Algorithms for Dermoscopy Image Analysis*

2002–2003 **M.Sc. in Computer Science and Engineering**, *University of Texas*, Arlington, TX.
Thesis Title: *Content Based Image Retrieval Incorporating Models of Human Perception*

1998–2002 **B.Sc. in Computer Engineering**, *Middle East Technical University*, Ankara, Turkey.

Appointments

Sep 16–Present **Professor and Chair**, *Department of Computer Science, University of Central Arkansas*, Conway, AR.

Aug 11–May 16 **Associate Professor**, *Department of Computer Science,* [redacted]

Aug 07–Aug 11 **Assistant Professor**, *Department of Computer Science,* [redacted]

Jan 07–May 07 **Visiting Assistant Professor**, *Department of Computer Science and Engineering,* [redacted]

Aug 06–Jan 07 **Post-Doctoral Fellow**, *Department of Electrical and Computer Engineering,* [redacted]

Aug 02–Aug 06 **Teaching Associate**, *Department of Computer Science and Engineering,* [redacted]

Research Interests

Medical Image Analysis, Color Image Processing, Data Clustering

Grants (PI: $650,245, Co-PI: $45,795)

- Title: Acquisition of a High-Performance Computing System for University of Central Arkansas
  Sponsor: National Science Foundation (NSF)
  Program: Major Research Instrumentation
  Role: Principal Investigator
  Dates: 10/17 – 09/20
  Amount: $105,084
- Title: Novel Enhancements to the K-Means Clustering Algorithm
  Sponsor: National Science Foundation (NSF)
  Program: Robust Intelligence
  Role: Principal Investigator
  Dates: 07/11 – 07/14
  Amount: $155,895

- Title: Acquisition of High Performance Computational Infrastructure for Image Analysis, Visualization, and Game Development
  Sponsor: National Science Foundation (NSF)
  Program: Major Research Instrumentation
  Role: Principal Investigator
  Dates: 05/10 – 04/12
  Amount: $154,901
- Title: Fast, Accurate, and Robust Methods for Lesion Border Detection in Dermoscopy Images
  Sponsor: National Natural Science Foundation of China (NSFC)
  Program: Research Fellowship for International Young Scientists
  Role: Principal Investigator
  Dates: 01/11 – 12/11
  Amount: 200,000 CNY
- Title: Enhancing Computer Science Education Using CGI Technology
  Sponsor: Louisiana Board of Regents
  Program: Traditional Enhancement
  Role: Principal Investigator
  Dates: 06/09 – 06/10
  Amount: $90,300
- Title: Advanced 3D Computer-Based Modeling and Prototyping Enhancement
  Sponsor: Louisiana Board of Regents
  Program: Traditional Enhancement
  Role: Co-Principal Investigator
  Dates: 06/09 – 06/10
  Amount: $45,795
- Title: Development of Image Analysis Techniques for the Early Diagnosis of Melanoma
  Sponsor: Louisiana Board of Regents
  Program: Research Competitiveness
  Role: Principal Investigator
  Dates: 06/08 – 06/11
  Amount: $110,619

Publications (Total: 156 – Books: 8, Journals: 73, Conference Proceedings: 72, Unpublished: 3)

Books

[1] M. Kawulok, M. E. Celebi, and B. Smolka, eds., *Advances in Face Detection and Facial Image Analysis*. Springer, 2016. ISBN: 9783319259567.

[2] M. E. Celebi and K. Aydin, eds., *Unsupervised Learning Algorithms*. Springer, 2015. ISBN: 9783319242095.

[3] M. E. Celebi, M. Lecca, and B. Smolka, eds., *Color Image and Video Enhancement*. Springer, 2015. ISBN: 9783319093628.

[4] M. E. Celebi, T. Mendonça, and J. S. Marques, eds., *Dermoscopy Image Analysis*. CRC Press, 2015. ISBN: 9781482253269.

[5] M. E. Celebi, ed., *Partitional Clustering Algorithms*. Springer, 2014. ISBN: 9783319092584.

[6] M. E. Celebi and B. Smolka, eds., *Advances in Low-Level Color Image Processing*. Springer, 2014. ISBN: 9789400775831.

[7] J. Scharcanski and M. E. Celebi, eds., *Computer Vision Techniques for the Diagnosis of Skin Cancer*. Springer, 2013. ISBN: 9783642396076.

[8] M. E. Celebi and G. Schaefer, eds., *Color Medical Image Analysis*. Springer, 2012. ISBN: 9789400753884.

Journal Articles/Book Chapters

[1] M. A. Marchetti, N. C. F. Codella, S. W. Dusza, D. A. Gutman, B. Helba, A. Kalloo, N. Mishra, C. Carrera, M. E. Celebi, J. L. DeFazio, N. Jaimes, A. A. Marghoob, E. Quigley, A. Scope, O. Yelamos, and A. C. Halpern, "Results of the 2016 International Skin Imaging Collaboration International Symposium on Biomedical Imaging Challenge: Comparison of the Accuracy of Computer Algorithms to Dermatologists for the Diagnosis of Melanoma from Dermoscopic Images," *Journal of the American Academy of Dermatology*, vol. 78, no. 2, pp. 270–277, 2018.

[2] C. Barata, M. E. Celebi, and J. S. Marques, "Development of a Clinically Oriented System for Melanoma Diagnosis," *Pattern Recognition*, vol. 69, pp. 270–285, 2017.

[3] A. R. Sadri, S. Azarianpour, M. Zekri, M. E. Celebi, and S. Sadri, "WN Based Approach to Melanoma Diagnosis from Dermoscopy Images," *IET Image Processing*, vol. 11, no. 7, pp. 475–482, 2017.

[4] A. Katapadi, M. E. Celebi, S. Trotter, and M. Gurcan, "Evolving Strategies for the Development and Evaluation of a Computerized Melanoma Image Analysis System," *Computer Methods in Biomechanics and Biomedical Engineering: Imaging and Visualization*, 2017. to appear.

[5] R. Kaur, R. LeAnder, N. K. Mishra, J. R. Hagerty, R. Kasmi, R. J. Stanley, M. E. Celebi, and W. V. Stoecker, "Thresholding Methods for Lesion Segmentation of Basal Cell Carcinoma in Dermoscopy Images," *Skin Research and Technology*, vol. 23, no. 3, pp. 416–428, 2017.

[6] O. Lézoray, C. Meurie, and M. E. Celebi, "Superpixels for Image Processing and Computer Vision," *Journal of Electronic Imaging*, vol. 26, no. 6, p. 061601, 2017.

[7] R. Jiang, A. Bouridane, D. Crookes, M. E. Celebi, and H. L. Wei, "Privacy-Protected Facial Biometric Verification via Fuzzy Forest Learning," *IEEE Transactions on Fuzzy Systems*, vol. 24, no. 4, pp. 779–790, 2016.

[8] R. Jiang, S. Al-Maadeed, A. Bouridane, D. Crookes, M. E. Celebi, and Q. Meng, "Face Recognition in Scrambled Domain via Salience-Aware Ensembles of Many Kernels," *IEEE Transactions on Information Forensics and Security*, vol. 11, no. 8, pp. 1807–1817, 2016.

[9] C. Barata, M. E. Celebi, J. S. Marques, and J. Rozeira, "Clinically Inspired Analysis of Dermoscopy Images Using a Generative Model," *Computer Vision and Image Understanding*, vol. 151, pp. 124–137, 2016.

[10] M. E. Celebi, Q. Wen, and S. Hwang, "An Effective Real-Time Color Quantization Method Based on Divisive Hierarchical Clustering," *Journal of Real-Time Image Processing*, vol. 10, no. 2, pp. 329–344, 2015.

[11] M. E. Celebi, B. Smolka, and G. Schaefer, "Special Issue on Real-Time Color Image Processing," *Journal of Real-Time Image Processing*, vol. 10, no. 2, pp. 189–191, 2015.

[12] C. Barata, M. E. Celebi, and J. S. Marques, "Improving Dermoscopy Image Classification Using Color Constancy," *IEEE Journal of Biomedical and Health Informatics*, vol. 19, no. 3, pp. 1146–1152, 2015.

[13] K. Shimizu, H. Iyatomi, M. E. Celebi, K. A. Norton, and M. Tanaka, "Four-Class Classification of Skin Lesions with Task Decomposition Strategy," *IEEE Transactions on Biomedical Engineering*, vol. 62, no. 1, pp. 274–283, 2015.

[14] M. E. Celebi, Q. Wen, H. Iyatomi, K. Shimizu, H. Zhou, and G. Schaefer, "A State-of-the-Art Survey on Lesion Border Detection in Dermoscopy Images," in *Dermoscopy Image Analysis* (M. E. Celebi, T. Mendonça, and J. S. Marques, eds.), pp. 97–129, CRC Press, 2015.

[15] C. Barata, M. E. Celebi, and J. S. Marques, "Towards a Robust Analysis of Dermoscopy Images Acquired under Different Conditions," in *Dermoscopy Image Analysis* (M. E. Celebi, T. Mendonça, and J. S. Marques, eds.), pp. 1–22, CRC Press, 2015.

[16] M. E. Celebi and H. A. Kingravi, "Linear, Deterministic, and Order-Invariant Initialization Methods for the K-Means Clustering Algorithm," in *Partitional Clustering Algorithms* (M. E. Celebi, ed.), pp. 79–98, Springer, 2014.

[17] M. E. Celebi, S. Hwang, and Q. Wen, "Color Quantization Using the Adaptive Distributing Units Algorithm," *Imaging Science Journal*, vol. 62, no. 2, pp. 80–91, 2014.

[18] M. E. Celebi and A. Zornberg, "Automated Quantification of Clinically Significant Colors in Dermoscopy Images and Its Application to Skin Lesion Classification," *IEEE Systems Journal*, vol. 8, no. 3, pp. 980–984, 2014.

[19] K. Shimizu, H. Iyatomi, K. A. Norton, and M. E. Celebi, "Extension of Automated Melanoma Screening for Non-Melanocytic Skin Lesions," *International Journal of Computer Applications in Technology*, vol. 50, no. 1–2, pp. 122–130, 2014.

[20] G. Schaefer, B. Krawczyk, M. E. Celebi, and H. Iyatomi, "An Ensemble Classification Approach for Melanoma Diagnosis," *Memetic Computing*, vol. 6, no. 4, pp. 233–240, 2014.

[21] M. E. Celebi, Q. Wen, S. Hwang, H. Iyatomi, and G. Schaefer, "Lesion Border Detection in Dermoscopy Images Using Ensembles of Thresholding Methods," *Skin Research and Technology*, vol. 19, no. 1, pp. e252–e258, 2013.

[22] M. E. Celebi, H. Kingravi, and P. A. Vela, "A Comparative Study of Efficient Initialization Methods for the K-Means Clustering Algorithm," *Expert Systems with Applications*, vol. 40, no. 1, pp. 200–210, 2013. [#8 in "Top 25 Most Cited" as of September 2017].

[23] Q. Abbas, I. F. Garcia, M. E. Celebi, W. Ahmad, and Q. Mushtaq, "A Perceptually Oriented Method for Contrast Enhancement and Segmentation of Dermoscopy Images," *Skin Research and Technology*, vol. 19, no. 1, pp. e490–e497, 2013.

[24] Q. Abbas, M. E. Celebi, C. Serrano, I. F. Garcia, and G. Ma, "Pattern Classification of Dermoscopy Images: A Perceptually Uniform Model," *Pattern Recognition*, vol. 46, no. 1, pp. 86–97, 2013.

[25] Q. Abbas, M. E. Celebi, and I. F. Garcia, "Breast Mass Segmentation Using Region-Based and Edge-Based Methods in a 4-Stage Multiscale System," *Biomedical Signal Processing and Control*, vol. 8, no. 2, pp. 204–214, 2013.

[26] Q. Abbas, I. F. Garcia, M. E. Celebi, W. Ahmad, and Q. Mushtaq, "Unified Approach for Lesion Border Detection Based on Mixture Modeling and Local Entropy Thresholding," *Skin Research and Technology*, vol. 19, no. 3, pp. 314–319, 2013.

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[3] N. K. Mishra and M. E. Celebi, "An Overview of Melanoma Detection in Dermoscopy Images Using Image Processing and Machine Learning." https://arxiv.org/abs/1601.07843, 2016.

Teaching Experience (F: Fall, S: Spring, U: Summer)

University of Central Arkansas

S17 **CSCI 1300 (Introduction to Computing)**, *Undergraduate.*

U17 **CSCI 4360/6397 (Special Topics: Data Clustering)**, *Undergraduate/Graduate.*

F17 **CSCI 4360 (Special Topics: Discrete Mathematics for Computer Science)**, *Undergraduate.*

Louisiana State University in Shreveport

U07 **CSC 101 (Introduction to the Internet)**, *Undergraduate.*

F08 **CSC 111 (Introduction to Computing)**, *Undergraduate.*

S08-09,U09-11 **CSC 115 (Computer Literacy)**, *Undergraduate.*

F07-08-09, S09-10-11, U09 **CSC 135 (Object-Oriented Programming I)**, *Undergraduate.*

S08,U07-10-11 **CSC 145 (Object-Oriented Programming II)**, *Undergraduate.*

F09-10-11-12 **CSC 242 (Computer Organization and Architecture)**, *Undergraduate.*

F07-08-09-10-11-12 **CSC 315 (Introduction to Database Systems)**, *Undergraduate.*

F10-12 **CSC 490/690 (Digital Image Processing and Analysis)**, *Undergraduate/Graduate.*

U12 **CSC 490/690 (Data Clustering)**, *Undergraduate/Graduate.*

S13 **CSC 490/690 (Algorithms)**, *Undergraduate/Graduate.*

S11-12 **CSC 495 (Independent Study)**, *Undergraduate.*

U11 **CSC 695 (Independent Study)**, *Graduate.*

S10-11-12-13 **CST 707 (Data Modeling and Database Design)**, *Graduate.*

S08-10-11-12-13 **CST 725 (Digital Multimedia)**, *Graduate.*

F07-11, S09 **CST 790 (Digital Image Processing and Analysis)**, *Graduate.*

S12 **CST 790 (Algorithms)**, *Graduate.*

F10 **CST 796 (Business Systems Project)**, *Graduate.*

S10-11-12,F10 **CST 798 (Computer Science Project)**, *Graduate.*

University of Bridgeport

S07 **CPSC 502 (Analysis of Algorithms)**, *Graduate.*

S07 **CPSC 503 (Operating Systems)**, *Graduate.*

Professional Activities

Book Series Editor

- Unsupervised and Semi-Supervised Learning, Springer [2017 – Present]
- Signal Processing for Security Technologies, Springer [2015 – Present]

Journal Editorial Board Member (4)

- Journal of Real-Time Image Processing [2013 – Present]
- Computer Methods in Biomechanics and Biomedical Engineering: Imaging & Visualization [2012 – Present]
- Journal of Pattern Recognition Research [2011 – Present]
- Imaging Science Journal [2009 – Present]

Journal Guest Editor (6)

- Journal of Electronic Imaging special issue on *Image and Video Analysis, Detection, and Recognition* (2018)
- IEEE Journal of Biomedical and Health Informatics special issue on *Skin Lesion Image Analysis for Melanoma Detection* (2018)
- Journal of Electronic Imaging special issue on *Superpixels for Image Processing and Computer Vision* (2017)

- Journal of Real-Time Image Processing special issue on *Real-Time Color Image Processing* (2013)
- EURASIP Journal on Advances in Signal Processing special issue on *Multispectral and Hyperspectral Image and Video Processing* (2012)
- Computerized Medical Imaging and Graphics special issue on *Skin Cancer Image Analysis* (2011)

Tutorial Presenter (3)

- "Early Color Image Processing," 14th IASTED Int. Conf. on Signal and Image Processing (*SIP 2012*)
- "A Whirlwind Tour of Color Image Processing," The 2012 IAENG Int. Conf. on Imaging Engineering (*ICIE 2012*)
- "Fundamentals of Color Image Processing," 13th IASTED Int. Conf. on Signal and Image Processing (*SIP 2011*)

Challenge Organizer (3)

- Skin Lesion Analysis Towards Melanoma Detection, 21st Int. Conf. on Medical Image Computing & Computer Assisted Intervention (*MICCAI 2018*)
- Skin Lesion Analysis Towards Melanoma Detection, IEEE Int. Symp. on Biomedical Imaging (*ISBI 2017*)
- Skin Lesion Analysis Towards Melanoma Detection, IEEE Int. Symp. on Biomedical Imaging (*ISBI 2016*)

Special Session/Workshop Organizer (13)

- Skin Image Analysis, 21st Int. Conf. on Medical Image Computing & Computer Assisted Intervention (*MICCAI 2018*)
- Computer Vision Based Measurements, 2016 IEEE Int. Conf. on Imaging Systems (*IST 2016*)
- Third IEEE Int. Ph.D. Workshop on Multimedia Computing Research, IEEE Int. Symp. on Multimedia (*ISM 2014*)
- Second IEEE Int. Ph.D. Workshop on Multimedia Computing Research, IEEE Int. Symp. on Multimedia (*ISM 2013*)
- Digital Imaging in Cultural Heritage, 8th Int. Symp. on Image and Signal Processing and Analysis (*ISPA 2013*)
- Ph.D. Workshop on Multimedia Computing Research, IEEE Int. Symp. on Multimedia (*ISM 2012*)
- 3rd Int. Workshop on Soft Computing in Image Processing and Computer Vision, 2011 Int. Conf. on Image Processing, Computer Vision, and Pattern Recognition (*IPCV 2011*)
- Special Session on Low-Level Color Image Processing, 16th Int. Conf. on Image Analysis and Processing (*ICIAP 2011*)
- Special Session on Low-Level Color Image Processing, 6th Int. Symp. on Visual Computing (*ISVC 2010*)
- Special Session on Low-Level Color Image Processing, 2009 APSIPA Ann. Summit and Conf. (*APSIPA ASC 2009*)
- Special Session on Digital Imaging in Cultural Heritage, 16th IEEE Int. Conf. on Image Processing (*ICIP 2009*)
- 2nd Int. Workshop on Computational Intelligence in Medical Imaging, 9th Int. Conf. on Information Technology and Applications in Biomedicine (*ITAB 2009*)
- 1st Int. Workshop on Computational Intelligence in Medical Imaging, 5th Int. Conf. on Soft Computing as Transdisciplinary Science and Technology (*CSTST 2008*)

Program Committee Member (133)

- 31st Int. FLAIRS Conf. (*FLAIRS-31*)
- 32nd Ann. ACM Symp. on Applied Computing (*ACM SAC 2017*)
- 30th Int. FLAIRS Conf. (*FLAIRS-30*)
- 6th ECCOMAS Thematic Conf. on Computational Vision and Medical Image Processing (*VipIMAGE 2017*)

- Int. Symp. on Computational Modeling of Objects Represented in Images (*CompIMAGE 2016*)
- 1st Int. Workshop on Advances in Image Processing and Colorization (*AIPC 2016*)
- Advanced Concepts for Intelligent Vision Systems (*ACIVS 2016*)
- IEEE Int. Conf. on Systems, Man, and Cybernetics (*IEEE SMC 2016*)
- 12th World Cong. on Intelligent Control and Automation (*WCICA 2016*)
- 6th Int. Conf. on Advanced Communications and Computation (*INFOCOMP 2016*)
- 2nd Int. Conf. on Smart Portable, Wearable, Implantable and Disability-Oriented Devices and Systems (*SPWID 2016*)
- 10th Int. Conf. on Semantic Computing (*ICSC 2016*)
- 2nd IEEE Int. Conf. on Multimedia Big Data (*BigMM 2016*)
- 29th Int. FLAIRS Conf. (*FLAIRS-29*)
- 31st Ann. ACM Symp. on Applied Computing (*ACM SAC 2016*)
- 11th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2016*)
- 3rd Int. Conf. on Physiological Computing Systems (*PhyCS 2016*)
- 9th Int. Conf. on Bio-Inspired Systems and Signal Processing (*BIOSIGNALS 2016*)
- 3rd Int. Conf. on Bioimaging (*BIOIMAGING 2016*)
- 11th Int. Conf. on Signal Image Technology and Internet Based Systems (*SITIS 2015*)
- 2nd MICCAI Workshop on Bio-Imaging and Visualization for Patient-Customized Simulations (*MW-BIVPCS 2015*)
- 1st MICCAI Workshop on Deep Learning in Medical Image Analysis (*DLMIA 2015*)
- 6th Int. Workshop on Soft Computing in Image Processing and Computer Vision (*SCIPCV 2015*)
- Int. Conf. on Innovation in Medicine and Healthcare (*InMed 2015*)
- Computer Methods in Biomechanics and Biomedical Engineering (*CMBBE 2015*)
- 4th Int. Conf. on Advances in Computing, Communications, and Informatics (*ICACCI 2015*)
- Advanced Concepts for Intelligent Vision Systems (*ACIVS 2015*)
- 12th Int. Symp. on Programming and Systems (*ISPS 2015*)
- 2nd Workshop on Computational Biomedical Image Processing and Analysis (*WCBIPA 2015*)
- 1st IEEE Int. Conf. on Multimedia Big Data (*BigMM 2015*)
- IADIS Int. Conf. on Computer Graphics, Visualization, Computer Vision and Image Processing (*CGVCVIP 2015*)
- 7th Int. Conf. on Future Computational Technologies and Applications (*FUTURE COMPUTING 2015*)
- 5th Int. Conf. on Information Science and Technology (*ICIST 2015*)
- 1st Int. Conf. on Human and Social Analytics (*HUSO 2015*)
- 1st Int. Conf. on Smart Portable, Wearable, Implantable and Disability-Oriented Devices and Systems (*SPWID 2015*)
- 28th Int. FLAIRS Conf. (*FLAIRS-28*)
- 5th Int. Conf. on Advanced Communications and Computation (*INFOCOMP 2015*)
- 30th Ann. ACM Symp. on Applied Computing (*ACM SAC 2015*)
- 7th Int. Conf. on Pervasive Patterns and Applications (*PATTERNS 2015*)
- 10th Int. Conf. on Systems (*ICONS 2015*)
- 2nd Int. Conf. on Physiological Computing Systems (*PhyCS 2015*)
- 10th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2015*)
- 2nd Int. Conf. on Bioimaging (*BIOIMAGING 2015*)
- 8th Int. Conf. on Bio-Inspired Systems and Signal Processing (*BIOSIGNALS 2015*)

- 5th ECCOMAS Thematic Conf. on Computational Vision and Medical Image Processing (*VipIMAGE 2015*)
- 10th Int. Conf. on Signal Image Technology and Internet Based Systems (*SITIS 2014*)
- IEEE Int. Symp. on Multimedia (*ISM 2014*)
- International Conference on Computer Vision and Graphics (*ICCVG 2014*)
- IEEE Int. Conf. on Systems, Man, and Cybernetics (*IEEE SMC 2014*)
- 2014 Int. Conf. on Active Media Technology (*AMT 2014*)
- 2014 Int. Conf. on Brain Informatics and Health (*BIH 2014*)
- IADIS Int. Conf. on Computer Graphics, Visualization, Computer Vision and Image Processing (*CGVCVIP 2014*)
- 4th Int. Conf. on Advanced Communications and Computation (*INFOCOMP 2014*)
- Int. Workshop on Image Analysis and Image Enhancement (*IAIE 2014*)
- Int. Symp. on Computational Modeling of Objects Represented in Images (*CompIMAGE 2014*)
- 6th Int. Conf. on Pervasive Patterns and Applications (*PATTERNS 2014*)
- 27th Int. FLAIRS Conf. (*FLAIRS-27*)
- 29th Ann. ACM Symp. on Applied Computing (*ACM SAC 2014*)
- 9th Int. Conf. on Systems (*ICONS 2014*)
- Ist Int. Conf. on Bioimaging (*BIOIMAGING 2014*)
- Int. Conf. on Physiological Computing Systems (*PhyCS 2014*)
- 7th Int. Conf. on Bio-Inspired Systems and Signal Processing (*BIOSIGNALS 2014*)
- 9th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2014*)
- 5th Int. Conf. on Pervasive Patterns and Applications (*PATTERNS 2013*)
- Int. Workshop on Medical Image and Signal Analysis (*MISA 2013*)
- Int. Conf. on Computational and Experimental Biomedical Sciences (*ICCEBS 2013*)
- 9th Int. Conf. on Signal Image Technology and Internet Based Systems (*SITIS 2013*)
- MICCAI 2013 Workshop on Bio-Imaging and Visualization for Patient-Customized Simulations (*MW-BIVPCS 2013*)
- 4th Int. Workshop on Soft Computing in Image Processing and Computer Vision (*SCIPCV 2013*)
- Int. Conf. on Innovation in Medicine and Healthcare (*InMed 2013*)
- IADIS Int. Conf. on Computer Graphics, Visualization, Computer Vision and Image Processing (*CGVCVIP 2013*)
- 4th Int. Conf. on Intelligent Control and Information Processing (*ICICIP 2013*)
- 4th Int. Workshop on Computational Intelligence in Medical Imaging (*CIMI 2013*)
- 17th Online World Conf. on Soft Computing in Industrial Applications (*WSC17*)
- Int. Conf. on Medical Imaging Using Bio-Inspired and Soft Computing (*MIBISOC 2013*)
- 26th Int. FLAIRS Conf. (*FLAIRS-26*)
- 14th IASTED Int. Conf. on Computer Graphics and Imaging (*CGIM 2013*)
- 10th IASTED Int. Conf. on Signal Processing, Pattern Recognition and Applications (*SPPRA 2013*)
- 8th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2013*)
- 28th Ann. ACM Symp. on Applied Computing (*ACM SAC 2013*)
- SPIE 2013 Conf. on Real-Time Image and Video Processing (*RTIVP 2013*)
- 6th Int. Conf. on Bio-Inspired Systems and Signal Processing (*BIOSIGNALS 2013*)
- 4th ECCOMAS Thematic Conf. on Computational Vision and Medical Image Processing (*VipIMAGE 2013*)
- 8th Int. Conf. on Signal Image Technology and Internet Based Systems (*SITIS 2012*)

- Int. Symp. on Computational Modeling of Objects Represented in Images (*CompIMAGE 2012*)
- 7th Iberian Conf. on Information Systems and Technologies (*CISTI 2012*)
- IADIS Int. Conf. on Computer Graphics, Visualization, Computer Vision and Image Processing (*CGVCVIP 2012*)
- 9th Int. Symp. on Neural Networks (*ISNN 2012*)
- IET Image Processing Conf. 2012 (*IPR 2012*)
- 2nd IASTED Int. Symposia on Imaging and Signal Processing in Healthcare and Technology (*ISPHT 2012*)
- 7th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2012*)
- 27th Ann. ACM Symp. on Applied Computing (*ACM SAC 2012*)
- 5th Int. Conf. on Bio-Inspired Systems and Signal Processing (*BIOSIGNALS 2012*)
- 5th Int. Conf. on Image and Signal Processing (*ICISP 2012*)
- 3rd Int. Workshop on Soft Computing in Image Processing and Computer Vision (*SCIPCV 2011*)
- 16th Online World Conf. on Soft Computing in Industrial Applications (*WSC16*)
- 7th Int. Conf. on Signal Image Technology and Internet Based Systems (*SITIS 2011*)
- IEEE Int. Workshop on Video Panorama (*IWVP 2011*)
- 1st Int. Conf. on Systems, Methodologies, Automation and Research Trends (*SMART 2011*)
- 3rd Workshop on Computational Intelligence for Multimedia Visual Information Processing (*CIMVIP 2011*)
- 13th IASTED Int. Conf. on Signal and Image Processing (*SIP 2011*)
- IADIS Int. Conf. on Computer Graphics, Visualization, Computer Vision and Image Processing (*CGVCVIP 2011*)
- 2nd Int. Conf. on Informatics (*ICI 2011*)
- IASTED Int. Conf. on Computational Photography (*CPhoto 2011*)
- IASTED Int. Conf. on Imaging and Signal Processing in Healthcare and Technology (*ISPHT 2011*)
- 6th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2011*)
- 8th Int. Symp. on Neural Networks (*ISNN 2011*)
- 4th Int. Conf. on Bio-Inspired Systems and Signal Processing (*BIOSIGNALS 2011*)
- 16th Int. Conf. on Image Analysis and Processing (*ICIAP 2011*)
- 26th Ann. ACM Symp. on Applied Computing (*ACM SAC 2011*)
- 3rd ECCOMAS Thematic Conf. on Computational Vision and Medical Image Processing (*VipIMAGE 2011*)
- 6th Int. Conf. on Signal-Image Technology and Internet-Based Systems (*SITIS 2010*)
- 6th Int. Conf. on Technology and Medical Sciences (*TMSi 2010*)
- 2nd Int. Workshop on Soft Computing in Image Processing and Computer Vision (*SCIPCV 2010*)
- 2010 IEEE Int. Conf. on Fuzzy Systems (*FUZZ-IEEE 2010*)
- 2010 IEEE Cong. on Evolutionary Computation (*IEEE CEC 2010*)
- 12th IASTED Int. Conf. on Signal and Image Processing (*SIP 2010*)
- IADIS Int. Conf. on Visual Communication (*VC 2010*)
- 4th Int. Conf. on Image and Signal Processing (*ICISP 2010*)
- 5th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2010*)
- 11th IASTED Int. Conf. on Computer Graphics and Imaging (*CGIM 2010*)
- Int. Symp. on Computational Modeling of Objects Represented in Images (*CompIMAGE 2010*)
- 5th Int. Conf. on Signal-Image Technology and Internet-Based Systems (*SITIS 2009*)

- Int. Workshop on Nature Inspired Biometrics (*WNIB 2009*)
- 1st Int. Workshop on Soft Computing in Image Processing and Computer Vision (*SCIPCV 2009*)
- 13th Int. Fuzzy Systems Association World Cong. (*IFSA 2009*)
- 3rd Int. Workshop on Multimedia Data Mining and Management (*MDMM 2009*)
- 6th Int. Symp. on Neural Networks (*ISNN 2009*)
- 11th IASTED Int. Conf. on Signal and Image Processing (*SIP 2009*)
- IADIS Int. Conf. on Visual Communication (*VC 2009*)
- 4th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2009*)
- 4th Int. Symp. on Visual Computing (*ISVC 2008*)
- 2nd IEEE Int. Conf. on Semantic Computing (*ICSC 2008*)
- 2nd Int. Workshop on Multimedia Data Mining and Management (*MDMM 2008*)
- 1st Int. Workshop on Multimedia Data Mining and Management (*MDMM 2007*)

Journal Reviewer (100+)

- Analytical Cellular Pathology
- Applied Mathematics and Computation
- Applied Optics
- Applied Soft Computing
- Artificial Intelligence in Medicine
- BioMed Research International
- Biomedical Optics Express
- Biomedical Signal Processing and Control
- BMC Bioinformatics
- Computational and Mathematical Methods in Medicine
- Computational Intelligence and Neuroscience
- Computer Methods and Programs in Biomedicine
- Computer Methods in Biomechanics and Biomedical Engineering: Imaging & Visualization
- Computer Vision and Image Understanding
- Computerized Medical Imaging and Graphics
- Computers and Electrical Engineering
- Computers in Biology and Medicine
- Data Mining and Knowledge Discovery
- Data Science Journal
- Dermatology Research and Practice
- Digital Signal Processing
- Displays
- Engineering Applications of Artificial Intelligence
- EURASIP Journal on Advances in Signal Processing
- EURASIP Journal on Image and Video Processing
- IBM Journal of Research and Development
- IEEE Access
- IEEE Journal of Biomedical and Health Informatics
- IEEE Journal of Translational Engineering in Health and Medicine
- IEEE Signal Processing Letters

- IEEE Transactions on Biomedical Engineering
- IEEE Transactions on Circuits and Systems for Video Technology
- IEEE Transactions on Cybernetics
- IEEE Transactions on Image Processing
- IEEE Transactions on Information Technology in Biomedicine
- IEEE Transactions on Instrumentation and Measurement
- IEEE Transactions on Knowledge and Data Engineering
- IEEE Transactions on Medical Imaging
- IEEE Transactions on Multimedia
- IEEE Transactions on Signal Processing
- IEEE Transactions on Systems, Man, and Cybernetics Part A
- IEEE Transactions on Systems, Man, and Cybernetics Part B
- IET Computer Vision
- IET Image Processing
- Image and Vision Computing
- Imaging Science Journal
- Information Sciences
- Information Technology Journal
- Int. Journal for Computational Vision and Biomechanics
- Int. Journal of Advanced Robotic Systems
- Int. Journal of Biomedical Imaging
- Int. Journal of Computers and Applications
- Int. Journal of Image and Graphics
- Int. Journal of Imaging Systems and Technology
- Int. Journal of Information Technology and Decision Making
- Int. Journal of Intelligent Computing in Medical Sciences and Image Processing
- Int. Journal of Pattern Recognition and Artificial Intelligence
- Int. Journal of Robotics and Automation
- Int. Journal on Computer Science and Engineering
- Int. Journal on Artificial Intelligence Tools
- Inverse Problems in Science and Engineering
- ISRN Artificial Intelligence
- Journal of Digital Imaging
- Journal of Digital Information Management
- Journal of Electronic Imaging
- Journal of Machine Learning Research
- Journal of Mathematical Imaging and Vision
- Journal of Medical Systems
- Journal of Pattern Recognition Research
- Journal of Real-Time Image Processing
- Journal of Skin Cancer
- Journal of Testing and Evaluation
- Journal of the Optical Society of America A

- Journal of Visual Communication and Image Representation
- Journal of Zhejiang University-SCIENCE B
- Knowledge-Based Systems
- Machine Vision and Applications
- Medical & Biological Engineering & Computing
- Medical Engineering & Physics
- Medical Image Analysis
- Melanoma Research
- Multidimensional Systems and Signal Processing
- Multimedia Tools and Applications
- National Academy Science Letters
- Neural Computing and Applications
- Neural Network World
- Neurocomputing
- Optical Engineering
- Optics Letters
- Opto-Electronics Review
- Pattern Recognition
- Pattern Recognition Letters
- PLOS ONE
- Scientific Reports
- Sensors
- Signal, Image and Video Processing
- Signal Processing: Image Communication
- Soft Computing
- SpringerPlus
- Statistical Methods and Applications
- Symmetry
- The Imaging Science Journal
- The Scientific World Journal

Conference Reviewer (100+)

- 14th Asian Conf. on Computer Vision (*ACCV 2018*)
- 15th European Conf. on Computer Vision (*ECCV 2018*)
- 24th Int. Conf. on Pattern Recognition (*ICPR 2018*)
- 2018 IEEE Conf. on Computer Vision and Pattern Recognition (*CVPR 2018*)
- 19th Int. Conf. on Image Analysis and Processing (*ICIAP 2017*)
- 23rd IEEE Int. Conf. on Image Processing (*ICIP 2016*)
- 14th European Conf. on Computer Vision (*ECCV 2016*)
- 23rd Int. Conf. on Pattern Recognition (*ICPR 2016*)
- 2016 IEEE Int. Conf. on Robotics and Automation (*ICRA 2016*)
- 2016 IEEE Conf. on Computer Vision and Pattern Recognition (*CVPR 2016*)
- 2016 IEEE Int. Conf. on Fuzzy Systems (*FUZZ-IEEE 2016*)
- 22nd IEEE Int. Conf. on Image Processing (*ICIP 2015*)

- 2015 IEEE Int. Conf. on Computer Vision (*ICCV 2015*)
- 37th Ann. Int. Conf. of the IEEE EMBS (*EMBC 2015*)
- 2015 IEEE Int. Conf. on Fuzzy Systems (*FUZZ-IEEE 2015*)
- Int. Symp. on Intelligent Systems Technologies and Applications (*ISTA 2015*)
- 2nd Int. Conf. on Computer, Communication, and Control Technology (*I4CT 2015*)
- 2015 IEEE Conf. on Computer Vision and Pattern Recognition (*CVPR 2015*)
- IEEE Int. Conf. on Signal Processing, Informatics, Communication and Energy Systems (*IEEE SPICES 2015*)
- 26th Ann. South Central Conf. of the Consortium for Computing Sciences in Colleges (*CCSC:SC 2015*)
- 2014 Int. Conf. on Control System, Computing and Engineering (*ICCSCE 2014*)
- 6th IEEE Int. Conf. on Engineering Education (*ICEED 2014*)
- 2014 Advancement in Information Technology Int. Conf. (*ADVCIT 2014*)
- 2014 IEEE Conf. on E-Learning, E-Management and E-Services (*IC3e 2014*)
- 2014 IEEE Conf. on Wireless Sensors (*ICWiSe 2014*)
- 2014 IEEE Conf. on Open Systems (*ICOS 2014*)
- 2014 IEEE Symp. on Business, Engineering & Industrial Applications (*ISBEIA 2014*)
- 2014 IEEE Symp. Series on Computational Intelligence (*SSCI 2014*)
- 2014 IEEE Symp. on Industrial Electronics & Applications (*ISIEA 2014*)
- 2014 IEEE Symp. on Wireless Technology & Applications (*ISWTA 2014*)
- 2014 Int. Conf. on Computer, Communication, and Control Technology (*I4CT 2014*)
- 36th Ann. Int. Conf. of the IEEE EMBS (*EMBC 2014*)
- IEEE EMBS Int. Conf. on Biomedical and Health Informatics (*BHI 2014*)
- 2014 Int. Symp. on Technology Management and Emerging Technologies (*ISTMET 2014*)
- 2nd Int. Conf. on Electronic Design 2014 (*ICED 2014*)
- 21st IEEE Int. Conf. on Image Processing (*ICIP 2014*)
- 27th IEEE Conf. on Computer Vision and Pattern Recognition (*CVPR 2014*)
- Int. Postgraduate Colloquium on Science and Technology 2014 (*IPCOST 2014*)
- IEEE EMBS Special Topic Conf. on Healthcare Innovation and Point-of-Care Technologies (*HIC-POCT 2014*)
- 22nd Int. Conf. on Pattern Recognition (*ICPR 2014*)
- 2014 IEEE Symp. on Computer Applications & Industrial Electronics (*ISCAIE 2014*)
- 2014 IEEE Colloquium on Humanities, Science and Engineering Research (*CHUSER 2014*)
- 25th Ann. South Central Conf. of the Consortium for Computing Sciences in Colleges (*CCSC:SC 2014*)
- 20th IEEE Int. Conf. on Image Processing (*ICIP 2013*)
- 2013 Int. Conf. on Connected Vehicles & Expo (*ICCVE 2013*)
- 2013 Int. Conf. on Control System, Computing and Engineering (*ICCSCE 2013*)
- 5th IEEE Int. Conf. on Engineering Education (*ICEED 2013*)
- 2013 IEEE Conf. on Wireless Sensors (*ICWiSe 2013*)
- 2013 IEEE Conf. on Open Systems (*ICOS 2013*)
- 39th Ann. Conf. of the IEEE Industrial Electronics Society (*IECON 2013*)
- 2013 IEEE Symp. on Industrial Electronics & Applications (*ISIEA 2013*)
- 2013 IEEE Symp. on Business, Engineering & Industrial Applications (*ISBEIA 2013*)
- 2013 IEEE Conf. on E-Learning, E-Management and E-Services (*IC3e 2013*)
- 2013 IEEE Symp. on Wireless Technology & Applications (*ISWTA 2013*)

- 2013 IEEE Symp. on Humanities, Science and Engineering Research (*SHUSER 2013*)
- 16th Int. Conf. on Medical Image Computing and Computer Assisted Intervention (*MICCAI 2013*)
- 35th Ann. Int. Conf. of the IEEE EMBS (*EMBC 2013*)
- 2013 IEEE Symp. on Computers and Informatics (*ISCI 2013*)
- 2013 IEEE Business Engineering and Industrial Applications Colloquium (*BEIAC 2013*)
- 2013 IEEE Int. Conf. on Fuzzy Systems (*FUZZ-IEEE 2013*)
- 24th Ann. South Central Conf. of the Consortium for Computing Sciences in Colleges (*CCSC:SC 2013*)
- 2012 IEEE Conf. on Open Systems (*ICOS 2012*)
- 2012 IEEE Int. Conf. on Control System, Computing and Engineering (*ICCSCE 2012*)
- 2012 IEEE Student Conf. on Research and Development (*SCORED 2012*)
- 4th Int. Cong. on Engineering Education (*ICEED 2012*)
- 2012 IEEE Symp. on E-Learning, E-Management and E-Services (*IS3e 2012*)
- 2012 IEEE Symp. on Computer Applications & Industrial Electronics (*ISCAIE 2012*)
- 2012 IEEE Colloquium on Humanities, Science and Engineering Research (*CHUSER 2012*)
- 2012 IEEE Symp. on Business, Engineering & Industrial Applications (*ISBEIA 2012*)
- 2012 IEEE Int. Conf. on Electronics Design, Systems and Applications (*ICEDSA 2012*)
- 2012 IEEE Conf. on Control, Systems & Industrial Informatics (*ICCSII 2012*)
- 2012 IEEE Int. Power and Energy Conf. (*PECON 2012*)
- 2012 IEEE Symp. on Industrial Electronics & Applications (*ISIEA 2012*)
- 15th Int. Conf. on Medical Image Computing and Computer Assisted Intervention (*MICCAI 2012*)
- 34th Ann. Int. Conf. of the IEEE EMBS (*EMBC 2012*)
- 2012 IEEE Symp. on Humanities, Science and Engineering Research (*SHUSER 2012*)
- 2012 IEEE Int. Conf. on Fuzzy Systems (*FUZZ-IEEE 2012*)
- 19th Int. Conf. on Systems, Signals and Image Processing (*IWSSIP 2012*)
- 2012 IEEE Int. Conf. on Robotics and Automation (*ICRA 2012*)
- 19th IEEE Int. Conf. on Image Processing (*ICIP 2012*)
- 2012 IEEE Symp. on Wireless Technology & Applications (*ISWTA 2012*)
- 2012 IEEE Symp. on Computers and Informatics (*ISCI 2012*)
- 2012 IEEE Business Engineering and Industrial Applications Colloquium (*BEIAC 2012*)
- 23rd Ann. South Central Conf. of the Consortium for Computing Sciences in Colleges (*CCSC:SC 2012*)
- 2011 Int. Conf. on Computer Applications and Industrial Electronics (*ICCAIE 2011*)
- 2011 IEEE Symp. on Wireless Technology & Applications (*ISWTA 2011*)
- 2011 IEEE Symp. on Industrial Electronics & Applications (*ISIEA 2011*)
- 2011 Int. Conf. on Electronic Devices, Systems & Applications (*ICEDSA 2011*)
- 2011 IEEE Symp. on Computers and Informatics (*ISCI 2011*)
- 2011 IEEE Student Conf. on Research and Development (*SCORED 2011*)
- ACM Multimedia 2011 (*ACM MM 2011*)
- 2011 IEEE Int. Conf. on Signal and Image Processing Applications (*ICSIPA 2011*)
- 2nd Int. Conf. on Computer and Communication Technology (*ICCCT 2011*)
- 6th Int. Conf. on Image and Graphics (*ICIG 2011*)
- 7th Int. Symp. on Visual Computing (*ISVC 2011*)
- 33rd Ann. Int. Conf. of the IEEE EMBS (*EMBC 2011*)
- 19th European Signal Processing Conf. (*EUSIPCO 2011*)

- 2011 IEEE Cong. on Evolutionary Computation (*IEEE CEC 2011*)
- 18th IEEE Int. Conf. on Image Processing (*ICIP 2011*)
- 2011 IEEE Int. Conf. on Fuzzy Systems (*FUZZ-IEEE 2011*)
- 3rd Int. Workshop on Computational Intelligence in Medical Imaging (*CIMI 2011*)
- 22rd Ann. South Central Conf. of the Consortium for Computing Sciences in Colleges (*CCSC:SC 2011*)
- 2010 IEEE Conf. on Open Systems (*ICOS 2010*)
- 2010 Int. Conf. on Computer Applications and Industrial Electronics (*ICCAIE 2010*)
- 17th IEEE Int. Conf. on Image Processing (*ICIP 2010*)
- 32nd Ann. Int. Conf. of the IEEE EMBS (*EMBC 2010*)
- 25th Ann. ACM Symp. on Applied Computing (*ACM SAC 2010*)
- 21st Ann. South Central Conf. of the Consortium for Computing Sciences in Colleges (*CCSC:SC 2010*)
- 16th IEEE Int. Conf. on Image Processing (*ICIP 2009*)
- 9th Int. Conf. on Intelligence Systems Design and Applications (*ISDA 2009*)
- 19th Int. Conf. on Artificial Neural Networks (*ICANN 2009*)
- 31st Ann. Int. IEEE EMBS Conf. (*EMBC 2009*)
- 2009 Int. Conf. on Advances in Social Networks Analysis and Mining (*ASONAM 2009*)
- 13th Pacific-Asia Conf. on Knowledge Discovery and Data Mining (*PAKDD 2009*)
- 20th Ann. South Central Conf. of the Consortium for Computing Sciences in Colleges (*CCSC:SC 2009*)
- 23rd Ann. ACM Symp. on Applied Computing (*ACM SAC 2008*)
- 6th Ann. Mid-South Conf. of the Consortium for Computing Sciences in Colleges (*CCSC-MS 2008*)
- 15th European Signal Processing Conf. (*EUSIPCO 2007*)

External Examiner (Ph.D.)

- Pegah Kharazmi, TBA, University of British Columbia, Canada (2018)
- Muhammad Sharif, TBA, National University of Computer & Emerging Sciences, Pakistan (2018)
- Javid Ullah, Human Action Recognition and Localization in Videos, National University of Computer & Emerging Sciences, Pakistan (2017)
- Catarina Barata, Automatic Detection of Melanomas Using Dermoscopy Images, Instituto Superior Técnico, Portugal (2017) [co-supervisor]
- Muhammad Sultan Zia, Incremental Learning Based Classification for Facial Expression Recognition, National University of Computer & Emerging Sciences, Pakistan (2015)
- Mohammed Ali Eltaher, Social User Mining: User Profiling of Social Media Network Based on Multimedia Data Mining, University of Bridgeport, USA (2015)
- Francesco Peruch, (Semi)-Automated Analysis of Melanocytic Lesions, University of Padova, Italy (2015)
- Ahmad Khan, An Evolutionary Approach to Unsupervised Color Image Segmentation, National University of Computer & Emerging Sciences, Pakistan (2014)
- Hengameh Mirzaalian, Computational Techniques for Skin Lesion Tracking and Classification, Simon Fraser University, Canada (2014)
- Mantosh Biswas, Study and Development of Image Denoising Techniques, Indian School of Mines, India (2013)
- Pablo Gauterio Cavalcanti, Automated Prescreening of Melanocytic Skin Lesions Using Standard Camera Images, Universidade Federal do Rio Grande do Sul, Brazil (2013)
- Maryam Sadeghi, Towards Prevention and Early Diagnosis of Skin Cancer: Computer-Aided Analysis of Dermoscopy Images, Simon Fraser University, Canada (2012)
- Radi Jarrar, On the Use of Visual Conceptual Information for the Indexing and Retrieval of the Image Regions, Monash University, Malaysia (2012)

- Paul Wighton, Towards Automated Skin Lesion Diagnosis, Simon Fraser University, Canada (2011)

Miscellaneous

- Area Chair, "Image Formation and Preprocessing," 14th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2019*)
- Area Chair, "Image Analysis, Detection and Recognition," 19th Int. Conf. on Image Analysis and Processing (*ICIAP 2017*)
- Area Chair, "Image Formation and Preprocessing," 12th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2017*)
- Lecturer, 1st AIDPATH Summer School on Stereology and Image Processing in Digital Pathology, Vilnius, Lithuania, Sep. 7–11 2015
- Area Chair, "Image Formation and Preprocessing," 10th Int. Conf. on Computer Vision Theory and Applications (*VISAPP 2015*)
- Judge (Poster Session), 27th Int. FLAIRS Conf. (*FLAIRS-27*)
- Session Chair (General Track, Algorithms), 27th Int. FLAIRS Conf. (*FLAIRS-27*)
- Session Chair (Computer Vision I), 10th Int. Conf. on Electronics, Computer and Computation (*ICECCO 2013*)
- Publicity Chair, 10th IASTED Int. Conf. on Signal Processing, Pattern Recognition and Applications (*SPPRA 2013*)
- Keynote Speaker, "Dermoscopy Image Analysis: Advances and Prospects," 14th IASTED Int. Conf. on Signal and Image Processing (*SIP 2012*)
- Session Chair (IMECS Keynote Speech I & II), 2012 IAENG Int. Conf. on Imaging Engineering (*ICIE 2012*)
- Session Chair (Multi-Frame Image Registration), 17th IEEE Int. Conf. on Image Processing (*ICIP 2010*)
- Session Chair (Color Acquisition and Processing II), 16th IEEE Int. Conf. on Image Processing (*ICIP 2009*)

Member

- Institute of Electrical and Electronics Engineers (IEEE) [Senior Member, 2011]
- Institute of Electrical and Electronics Engineers (IEEE) [Senior Member, 2011]
- Technology Working Group of the International Skin Imaging Collaboration (ISIC) [Member, 2016]

Invited Speaker

- "Hierarchical Initialization for K-Means Clustering," Dept. of Signal Processing and Communications, University of Seville, Seville, Spain, Sep 2017
- "Efficient, Effective, and Reliable Lesion Border Detection in Dermoscopy Images," Dept. of Signal Processing and Communications, University of Seville, Seville, Spain, Sep 2017
- "Eluding Local Minima in K-Means Clustering Using Hierarchical Initialization," Dept. of Computer Science, Baylor University, Waco, TX, Mar 2017
- "Dermoscopy Image Analysis," Dept. of Computer Science and Information Systems, Bradley University, Peoria, IL, Jun 2015
- "Dermoscopy Image Analysis," Dept. of Computer Science and Information Systems, Texas A&M University, Commerce, TX, Apr 2015
- "An Introduction to Dermoscopy Image Analysis," Dept. of Computer Science and Media Technology, Gjøvik University College, Gjøvik, Norway, Feb 2015
- "An Introduction to Color Image Filtering," Dept. of Computer Science and Media Technology, Gjøvik University College, Gjøvik, Norway, Feb 2015
- "Dermoscopy Image Analysis," Dept. of Computer Science & Engineering Technology, University of Houston-Downtown, Houston, TX, Feb 2015
- "Algorithms for Dermoscopy Image Analysis," Dept. of Computer Science, Sonoma State University, Rohnert Park, CA, Dec 2014

- "Progress in Melanoma Diagnosis Based on Dermoscopy Image Analysis," Dept. of Dermatology and Skin Science, University of British Columbia, Vancouver, BC, Canada, Nov 2014
- "Advances in the Computer-Aided Diagnosis of Melanoma Based on Dermoscopy Image Analysis," School of Computing Science, Simon Fraser University, Burnaby, BC, Canada Nov 2014
- "Computer-Aided Diagnosis of Melanoma Using Dermoscopy Image Analysis," School of Engineering, University of Bridgeport, Bridgeport, CT, Oct 2014
- "Progress in Dermoscopy Image Analysis," Dept. of Applied Mathematics, University of Porto, Porto, Portugal, Sep 2013
- "Border Detection: What Is New? How Close Are We to Solving This Problem?," 3rd Quadrennial Automatic Skin Cancer Detection Symposium, Missouri University of Science and Technology, Rolla, MO, Aug 2013
- "Lesion Border Detection in Dermoscopy Images," Dept. of Computer Science and Engineering, University of Bridgeport, Bridgeport, CT, Apr 2013
- "Academic Job Search 101," IEEE International Symposium on Multimedia (*ISM 2012*), Irvine, CA, Dec 2012
- "The Joy of Image Processing and Industrial Vision," Pilot Preview Day, Louisiana State University, Shreveport, LA, Apr 2012
- "Advances in Dermoscopy Image Analysis," School of Computer Science and Engineering, University of Electronic Science and Technology of China, Chengdu, P.R. China, May 2011
- "Enhancing Teaching Performance," Dept. of Computer Science, North American College, Houston, TX, Apr 2011
- "Discovering Image Processing and Machine Vision," Pilot Preview Day, Louisiana State University, Shreveport, LA, Nov 2010
- "Skin Lesion Localization and Contrast Enhancement in Dermoscopy Images," Faculty of Computers and Information, Cairo University, Cairo, Egypt, Nov 2009
- "Approximate Lesion Localization in Dermoscopy Images," 2nd Quadrennial Cutaneous S&T Imaging Conference, Missouri University of Science and Technology, Rolla, MO, Aug 2009
- "Fast and Effective Color Reduction Using K-Means Clustering," College of Sciences Symposium Series, Louisiana State University, Shreveport, LA, Apr 2009
- "Computer-Aided Diagnosis of Melanoma," Dept. of Dermatology, Ege University, Izmir, Turkey, Mar 2009
- "Numerical Approximations in Color Image Processing," Dept. of Mathematics, Wayne State University, Detroit, MI, Nov 2008
- "Dermoscopy Image Analysis," Louisiana Board of Regents, Louisiana State University, Shreveport, LA, Mar 2008
- "Insight into Academic Job Search," The Institute of Academic Studies, Dallas, TX, Nov 2007
- "Development of Algorithms for Dermoscopy Image Analysis," Bioinformatics Affinity Group, Louisiana State University Health Sciences Center, Shreveport, LA, Oct 2007
- "Visual Computing 101," CSI-LSUS Program for High School Students, Louisiana State University, Shreveport, LA, Jul 2007
- "Development of Algorithms for Dermoscopy Image Analysis," Dept. of Computer Science and Engineering, University of Bridgeport, Bridgeport, CT, Mar 2007
- "Automatic Border Detection in Dermoscopy Images," Dept. of Electrical and Computer Engineering, The University of Missouri, Rolla, MO, Jul 2005

Honors, Awards, Certificates

- *Best Track Paper Award* at the 10th International Conference on Electronics, Computer and Computation (ICECCO 2013), Ankara, Turkey (Nov 2013)
- Travel grant to attend the 6th Biennial CRA Career Mentoring Workshop (Feb 2010)
- LSUS *Learn to Teach Online Program* Certificate (May 2008)

- Oracle Certified Associate Database Administrator (Feb 2004)
- *Outstanding Research by a Masters Student* award from Lockheed Martin Aeronautics (Feb 2004)
- Silver medal in National Mathematics Competition, Ankara, Turkey (Jan 1997)

Software Development

- Software Page for NSF Award #1117457. Available at `http://code.google.com/p/nsf1117457/`
- Fourier: An open-source image processing and analysis library written in ANSI C. Available at `http://sourceforge.net/projects/fourier-ipal/`

University of Central Arkansas

has conferred upon

Jiaqi Zhao

the degree of

Bachelor of Science

and all the Rights, Privileges and Honors thereto appertaining.
In Witness Thereof, this diploma duly signed has been issued and
the seal of this University hereunto affixed.

Issued by the Board of Trustees upon recommendation of the Faculty at Conway, Arkansas.

May 6, 2017

Elizabeth Fa...
Chair, Board of Trustees

Jenny Alcorta
Secretary, Board of Trustees

Houston D. Davis
President of the University

Executive Vice President and Provost

University of Central Arkansas™
Office of the Registrar

TRANSCRIPT OF ACADEMIC RECORD

Date Issued: 25-AUG-2017

Record of: Jiaqi Zhao

Date of Birth: [redacted]

Student ID: [redacted]

Level: Undergraduate

Course Level: Undergraduate

Degree Awarded: Bachelor of Science 06-MAY-2017
Primary Degree
Program: BS, Computer Science 2410
Major: Computer Science

SUBJ NO	COURSE TITLE	CRED GRD	PTS R
INSTITUTION CREDIT:			
Spring 2014			
MATH 1390	COLLEGE ALGEBRA	3.00 A	12.00
SPCH 1300	BASIC ORAL COMMUNICATION	3.00 B	9.00
Ehrs: 6.00 GPA-Hrs: 6.00 QPts: 21.00 GPA: 3.50			
Summer 2014			
PHYS 1400	PHYSICAL SCIENCE GEN EDUC	4.00 A	16.00
PSCI 1330	US GOVERNMENT & POLITICS	3.00 C	6.00
Ehrs: 7.00 GPA-Hrs: 7.00 QPts: 22.00 GPA: 3.14			
Fall 2014			
BIOL 1400	BIO GEN EDUC: HUMAN BIOLOGY	0.00 W	0.00
H ED 1320	CONC LIFETIME HEALTH/FITNESS	3.00 C	6.00
PHIL 1301	PHILOSOPHY FOR LIVING	3.00 B	9.00
WRTG 1310	INTRO TO COLLEGE WRITING	3.00 B	9.00
Ehrs: 9.00 GPA-Hrs: 9.00 QPts: 24.00 GPA: 2.67			
Spring 2015			
BIOL 1400	BIO GEN ED: CORE CONCEPTS	4.00 A	16.00
CSCI 1470	COMPUTER SCIENCE I	4.00 A	16.00
MATH 1491	APPLIED CALCULUS FOR LIFE SCI	4.00 B	12.00
NUTR 1300	NUTRITION IN THE LIFE CYCLE	3.00 B	9.00
WRTG 1320	ACADEMIC WRITING & RESEARCH	3.00 A	12.00
Ehrs: 18.00 GPA-Hrs: 18.00 QPts: 65.00 GPA: 3.61			
Summer 2015			
CSCI 1480	COMPUTER SCIENCE II	0.00 W	0.00
ECON 2321	PRINCIPLES OF MICROECONOMICS	3.00 A	12.00
MUS 2300	MUSIC APPRECIATION	3.00 A	12.00
Ehrs: 6.00 GPA-Hrs: 6.00 QPts: 24.00 GPA: 4.00			
Fall 2015			
CSCI 1480	COMPUTER SCIENCE II	4.00 A	16.00

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:			
CSCI 2440	ASSEMBLY LANG & COMPUTER ORG	4.00 B	12.00
ECON 2310	GLOBAL ENVIRONMENT OF BUSINESS	3.00 A	12.00
MATH 3311	STATISTICAL METHODS I	3.00 B	9.00
Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 49.00 GPA: 3.50			
Spring 2016			
CSCI 2320	DATA STRUCTURES	3.00 C	6.00
CSCI 3380	COMPUTER ARCHITECTURE	3.00 B	9.00
MATH 2330	DISCRETE STRUCTURES I	3.00 C	6.00
MATH 3311	STATISTICAL METHODS II	3.00 A	12.00
PHYS 1410	COLLEGE PHYSICS 1	4.00 C	8.00
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 41.00 GPA: 2.56			
Summer 2016			
CSCI 3335	NETWORKING	3.00 A	12.00
CSCI 3370	PRINCIPLES PROGRAMMING LANGS	3.00 A	12.00
CSCI 4300	OPERATING SYSTEMS	3.00 A	12.00
PHYS 1420	COLLEGE PHYSICS 2	4.00 C	8.00
Ehrs: 13.00 GPA-Hrs: 13.00 QPts: 44.00 GPA: 3.38			
Fall 2016			
CSCI 3190	SOCIAL IMPLICATIONS TECHNOLOGY	1.00 B	3.00
CSCI 3330	ALGORITHMS	3.00 A	12.00
CSCI 3360	DATABASE SYSTEMS	3.00 B	9.00
CSCI 3381	O-O SOFTWARE DEVELOPMENT JAVA	3.00 A	12.00
CSCI 4191	SEMINAR IN APPLIED COMPUTING	1.00 A	4.00
CSCI 4357	PROGRAMMING MOBILE DEVICES	3.00 A	12.00
MATH 3320	LINEAR ALGEBRA & MATRICES	3.00 B	9.00
Ehrs: 17.00 GPA-Hrs: 17.00 QPts: 61.00 GPA: 3.59			
Spring 2017			
CHIN 1111	CONVERSATIONAL CHINESE	1.00 CR	0.00
CSCI 4490	SOFTWARE ENGINEERING	4.00 A	16.00
CSCI 5365	WEB TECHNOLOGY (4+1)	3.00 A	12.00
CSCI 5370	DATA MINING (4+1)	3.00 B	9.00
MATH 3330	DISCRETE STRUCTURES II	3.00 D	3.00
Ehrs: 14.00 GPA-Hrs: 13.00 QPts: 40.00 GPA: 3.08			

********** CONTINUED ON PAGE 2 **********

Issued To:
JIAQI ZHAO
HOLD FOR PICKUP

Rebekah Rabuck, University Registrar
University Registrar

This officially sealed and signed transcript is printed on purple SCRIP-SAFE security paper. A raised seal is not required. When photocopied a security statement containing the name of the institution should appear. A BLACK ON WHITE OR A COLOR COPY SHOULD NOT BE ACCEPTED.

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University of Central Arkansas™
Office of the Registrar

TRANSCRIPT OF ACADEMIC RECORD

Record of: Jiaqi Zhao

Date Issued: 25-AUG-2017
Date of Birth: [redacted]
Student ID: [redacted]
Level: Undergraduate

********** TRANSCRIPT TOTALS **********				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	120.00	119.00	391.00	3.29
TOTAL TRANSFER	0.00	0.00	0.00	0.00
OVERALL	120.00	119.00	391.00	3.29

********** END OF TRANSCRIPT **********

Rebekah Resnick
Rebekah D. Resnick, University Registrar
University Registrar

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Issued To:
JIAQI ZHAO
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University of Central Arkansas™
Office of the Registrar

TRANSCRIPT OF ACADEMIC RECORD

Date Issued: 25-AUG-2017

Record of: Jiaqi Zhao
Date of Birth: [redacted]
Student ID: [redacted]
Level: IEP

Course Level: IEP

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
INSTITUTION CREDIT:						
Spring 2013						
IEP	1121	LEVEL 2 ACADEMIC VOCABULARY	1.00	B	3.00	
IEP	1122	LEVEL 3 ACADEMIC VOCABULARY	1.00	A	4.00	
IEP	1206	LEVEL 2 LISTENING & SPEAKING	2.00	B	6.00	
IEP	1207	LEVEL 3 LISTENING & SPEAKING	2.00	B	6.00	
IEP	1216	LEVEL 2 ACADEMIC READING	2.00	A	8.00	
IEP	1217	LEVEL 3 ACADEMIC READING	2.00	A	8.00	
IEP	1226	LEVEL 2 ACADEMIC WRITING	2.00	B	6.00	
IEP	1227	LEVEL 3 ACADEMIC WRITING	2.00	B	6.00	
IEP	1236	LEVEL 2 ACADEMIC GRAMMAR	2.00	B	6.00	
IEP	1237	LEVEL 3 ACADEMIC GRAMMAR	2.00	B	6.00	
	Ehrs: 18.00	GPA-Hrs: 18.00 QPts:	59.00	GPA:	3.28	
Fall 2013						
IEP	1123	LEVEL 4 ACADEMIC VOCABULARY	1.00	B	3.00	
IEP	1124	LEVEL 5 ACADEMIC VOCABULARY	1.00	B	3.00	
IEP	1208	LEVEL 4 LISTENING & SPEAKING	2.00	B	6.00	
IEP	1209	LEVEL 5 LISTENING & SPEAKING	2.00	B	6.00	
IEP	1218	LEVEL 4 ACADEMIC READING	2.00	B	6.00	
IEP	1219	LEVEL 5 ACADEMIC READING	2.00	C	4.00	
IEP	1228	LEVEL 4 ACADEMIC WRITING	2.00	B	6.00	
IEP	1229	LEVEL 5 ACADEMIC WRITING	2.00	B	6.00	
IEP	1238	LEVEL 4 ACADEMIC GRAMMAR	2.00	B	6.00	
IEP	1239	LEVEL 5 ACADEMIC GRAMMAR	2.00	B	6.00	
	Ehrs: 18.00	GPA-Hrs: 18.00 QPts:	52.00	GPA:	2.89	
Spring 2014						
IEP	1219	LEVEL 5 ACADEMIC READING	2.00	A	8.00	
	Ehrs: 2.00	GPA-Hrs: 2.00 QPts:	8.00	GPA:	4.00	

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	38.00	38.00	119.00	3.13
TOTAL TRANSFER	0.00	0.00	0.00	0.00
OVERALL	38.00	38.00	119.00	3.13

********** END OF TRANSCRIPT **********

Rebekah Rabenick, University Registrar
University Registrar

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Issued To:
JIAQI ZHAO
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University of Central Arkansas™
Office of the Registrar

TRANSCRIPT OF ACADEMIC RECORD

Record of: Jiaqi Zhao

Date Issued: 25-AUG-2017
Date of Birth: [redacted]
Student ID: [redacted]
Level: UNIV

Course Level: UNIV

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
INSTITUTION CREDIT						
Spring 2014						
UNIV	0361	FUND OF COLLEGE LITERACY	3.00	B	9.00	
UNIV	1100	UNIVERSITY STUDIES	1.00	A	4.00	
	Ehrs: 4.00	GPA-Hrs: 4.00	QPts:	13.00	GPA:	3.25
Fall 2014						
UNIV	1300	TRANSITIONAL WRITING	3.00	B	9.00	
	Ehrs: 3.00	GPA-Hrs: 3.00	QPts:	9.00	GPA:	3.00

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	7.00	7.00	22.00	3.14
TOTAL TRANSFER	0.00	0.00	0.00	0.00
OVERALL	7.00	7.00	22.00	3.14

********** END OF TRANSCRIPT **********

Rebekah Barnick
Rebekah Barnick, University Registrar
University Registrar

This officially sealed and signed transcript is printed on purple SCRIP-SAFE® security paper. A raised seal is not required. When photocopied a security statement containing the name of the institution should appear. A BLACK ON WHITE OR A COLOR COPY SHOULD NOT BE ACCEPTED.

Issued To:

JIAQI ZHAO
HOLD FOR PICKUP

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July 17, 2018

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St.
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

MAGNA IV COLOR IMAGING INC
c/o MISTY WILSON BORKOWSKI
CROSS GUNTER WITHERSPOON & GALCHUS
500 PRES CLINTON AVE STE 200
LITTLE ROCK, AR 72201

EAC1815051715

RE: JIAQI ZHAO
I-129, Petition for a Nonimmigrant Worker

***STUDENT* REQUEST FOR EVIDENCE**

IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE NUMBER. THIS PAGE MUST BE SUBMITTED WITH THE REQUESTED EVIDENCE. MAIL THIS NOTICE AND YOUR RESPONSE TO THE ADDRESS ABOVE.

You are receiving this notice because U.S. Citizenship and Immigration Services (USCIS) requires additional evidence to process your form. Please provide the evidence listed on the attached page(s). Include duplicate copies if you are requesting consular notification. **Your response must be received in this office by October 12, 2018.**

Please note that you have been allotted the maximum period allowed for responding to a Request For Evidence (RFE). The time period for responding cannot be extended. 8 CFR 103.2(b)(8)(iv). Because many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible, but no later than the deadline provided above. If you do not respond to this notice within the allotted time, your case may be denied. The regulations do not provide for an extension of time to submit the requested evidence.

You must submit all requested evidence at the same time. If you submit only some of the requested evidence, USCIS will consider your response a request for a decision on the record. 8 CFR 103.2(b)(11).

If you submit a document in any language other than English, the document must be accompanied by a full and **complete** English translation. The translator must certify that the translation is accurate and he or she is competent to translate from that language to English. **If you submit a foreign language translation in response to this request for evidence, you must also include a copy of the foreign language document.**

Processing of your form or benefit request will resume upon receipt of your response. If you have not heard from USCIS within**60 days of responding**, you may contact the USCIS Contact Center at **1-800-375-5283**. If you are hearing impaired, please call the USCIS Contact Center TDD at **1-800-767-1833.**

S

U.S. Citizenship and Immigration Services (USCIS) has reviewed your petition/application and supporting evidence. You did not submit sufficient evidence to establish that the proffered position qualifies as a specialty occupation requiring the attainment of a bachelor's or higher degree in a specific specialty. Therefore, additional evidence is needed.

The Petitioner

Documentation submitted with you petition indicates that your company provides printing and marketing services.

Specialty Occupation

You filed a Petition for Nonimmigrant Worker, Form I-129, seeking H-1B nonimmigrant classification. With your petition, you submitted a Labor Condition Application (LCA) that lists the offered position as Computer Programmer. The H-1B classification applies to individuals who will perform services in a specialty occupation. A specialty occupation is defined as an occupation that requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States.

To process your petition and determine eligibility, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items;
- Submit none of the suggested items and instead submit other evidence to satisfy the request;
- Explain how the evidence in the record already establishes eligibility; and/or
- Request a decision based on the record.

To qualify as a specialty occupation, the position must meet at least one of the below regulatory criteria. U.S. Citizenship and Immigration Services (USCIS) interprets the term "degree" in the criteria below to mean not just any degree, but a bachelor's or higher degree in a *specific* specialty, or its equivalent, that is directly related to the offered position.

With your response to this notice, identify which of the specialty occupation regulatory criteria you feel has been satisfied. If you feel the offered position qualifies under multiple criteria, identify the evidence that you feel satisfies each criterion.

Degree is Normally Minimum Requirement
You may establish eligibility by showing that a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

You submitted a certified LCA which lists the SOC (ONET/OES) code number as 15-1131 and the Occupation Title of Computer Programmer.

USCIS routinely references information provided in the Department of Labor's *Occupational Outlook Handbook* (*OOH*) which discusses the educational prerequisites for positions. The *OOH* indicates the following educational requirements for Computer Programmer positions:

"Most computer programmers have a bachelor's degree in computer science or a related

subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages."

As the *OOH* does not indicate that Computer Programmer positions require a minimum of a baccalaureate degree in a *specific* specialty, or its equivalent, it does not establish that this is a specialty occupation. Further, a range of educational credentials, including those less than a bachelor's degree may qualify an individual to perform the duties of a Computer Programmer.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Relevant documentation from an authoritative career resource, such as the Department of Labor's *OOH* which describes the work environment and lists the duties, education, training, skills, and other qualifications and/or requirements for the occupation. Include a statement describing how the particular position relates to the occupation listed in the career guide and how the information in the career guide demonstrates that a bachelor's or higher degree in a *specific* specialty, or its equivalent, is normally the minimum requirement for the particular position.
- Any evidence you believe will establish that a bachelor's or higher degree in a *specific* specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

Degree Common to the Industry

You may establish eligibility by showing that the degree requirement of a bachelor's degree or higher in a *specific* specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.

You did not submit any evidence for this criterion.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations. Job postings or advertisements should include:
  - The date and source of the job posting or announcement; and
  - A detailed description of the duties of the position and the educational, training, and experience requirements of the position.
- Documentation to establish that the company or firm offering the position in these job postings or announcements is within your industry and is similar to your organization.
- Any documentation which establishes that the submitted job postings or advertisements represent the industry standards for the position.
- Copies of letters or affidavits from firms or individuals in the industry attesting that similar organizations routinely employ and recruit only individuals with a bachelor's or higher degree in a *specific* specialty, or its equivalent. Any letter or affidavit should be supported by documentation of the following:
  - The writer's qualifications as an expert;
  - How the writer's conclusions were reached; and
  - The basis for the writer's conclusions, supported by copies or citations of any materials used.
- Any evidence you wish to provide that you feel satisfies this criterion.

Position So Complex or Unique

You may establish eligibility by showing that the particular position is so complex or unique that it can be performed only by an individual with a bachelor's or higher degree in a *specific* specialty, or its equivalent.

To satisfy this criterion, you submitted:

- A company support letter describing your company, the duties of the proffered position, and the beneficiary's qualifications.

The evidence you submitted is insufficient. The petitioner's letter of support offers general information about the petition, the beneficiary and a brief description of the proffered specialty occupation position. By describing the duties to be performed by the beneficiary without evidence to support the position is not an indication that the proffered position qualifies as a specialty occupation. The duties and responsibilities you have described are vague and do not establish the need for an individual who possesses the minimum of a baccalaureate degree in a specific field of study. For example, you state that the beneficiary will:

- Manage Mindfire Campaigns in building html pages for cross-medial projects;
- Assist in developing, supporting and extending web storefronts powered by Pageflex, PrestaShop and Wordpress;
- Build Studio templates for customizable or static items and general site maintenance;
- Site skinning, report building and database implementation;
- Collaborate with departments to streamline the workflow between systems;
- Interact with other personnel in solving complex business and technical problems;
- Work with scratch coding in PHP, MySQL;
- Work with projects involving Angularjs, nodejs, mongodb, C#, Javascript;
- Write query to select data and also modify data from SQL database; and
- Work with terminal Windows and Linux servers.

It is not apparent from limited descriptions like these how such duties establish the proffered position is so complex or unique that it can be performed only by an individual with a bachelor's or higher degree in a *specific* specialty, or its equivalent.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Letters from an industry-related professional association indicating that the particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a *specific* specialty, or its equivalent.
- Letters or affidavits from firms or individuals in the industry attesting that the particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a *specific* specialty, or its equivalent. Any letter or affidavit should be supported by documentation of the following:
    - The writer's qualifications as an expert;
    - How the writer's conclusions were reached; and
    - The basis for the writer's conclusions, supported by copies or citations of any materials used.
- Copies of trade publications or other articles within your industry which demonstrate and highlight the specific complex or unique functions of the particular position, which can only be performed only by an individual with a bachelor's degree in a *specific* specialty, or its equivalent.
- Any evidence you wish to provide that you feel satisfies this criterion.

Employer Normally Requires Degree or its Equivalent
You may establish eligibility by showing that you normally require a bachelor's degree or higher in a *specific* specialty, or its equivalent, for the position.

To satisfy this criterion, you submitted:

- A company support letter describing your company, the duties of the proffered position, and the beneficiary's qualifications.

While you claim that the offered position requires a degree, your opinion alone cannot establish the position as a specialty occupation. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, as the minimum for entry into the occupation as required by the Act. If USCIS was limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Copies of your present and past job postings or announcements for the offered position showing that you require applicants to have a minimum of a bachelor's or higher degree in a *specific* specialty, or its equivalent.
- Documentary evidence of your past employment practices for the position, including:
  - Documentation which lists the number of employees hired for the position in the last two years;
  - Copies of employment or pay records identifying past and present employees in this position;
  - Copies of degrees and/or transcripts to verify the level of education and field of study of each individual you hired for this position in the last two years. Additionally, provide evidence to establish the duties that the individuals performed for this position, such as official position descriptions, job offer letters, job postings, or performance reviews; and
  - An organizational chart or diagram, showing your organizational structure and staffing levels.
- Documentation which lists the educational, experience, training, and skills requirements of the offered position, such as official position descriptions, job offer letters, or job postings.
- Any evidence you wish to provide that you feel satisfies this criterion.

Nature of Specific Duties So Specialized and Complex
You may establish eligibility by showing that the nature of the specific duties of the offered position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's or higher degree in a *specific* specialty, or its equivalent.

To satisfy this criterion, you submitted:

- A company support letter describing your company, the duties of the proffered position, and the beneficiary's qualifications; and
- A letter of support from Dr. Emre Celebi.

The evidence you submitted is insufficient. As discussed above, the petitioner's letter of support offers

general information about the petition, the beneficiary and a brief description of the proffered specialty occupation position. It does not establish that the nature of the specific duties of the offered position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's or higher degree in a *specific* specialty, or its equivalent.

You provided a letter of support from Dr. Emre Celebi that states that the duties of the proffered position require the minimum of a Bachelor's degree in Computer Science; however, the letter is not support by any documentary evidence.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- An explanation of the specific duties, as they relate to your products and services, and how the nature of those duties of the offered position are so specialized and complex, that they are usually associated with the attainment of a bachelor's degree or higher in a *specific* field of study; provide an explanation of what differentiates your products and services from other employers in the same industry. Be specific and provide documentation to support any explanation of specialization and complexity.
- Letters or affidavits from firms, individuals, professional associations, or customers attesting that the nature of your products and services are so specialized and complex that a bachelor's level of education, or higher, in a *specific* field of study is a prerequisite for the duties of the offered position. Any letter or affidavit should be supported by documentation of the following:
  - The writer's qualifications as an expert;
  - How the writer's conclusions were reached; and
  - The basis for the writer's conclusions, supported by copies or citations of any materials used.
- Copies of trade publications or other articles about your company that highlights the nature of your products and services and demonstrates that the specific duties of the offered position are so specialized and complex that a bachelor's level of education, or higher, in a specific field of study is a prerequisite for entry into the position.
- Any evidence you wish to provide that you feel satisfies this criterion.

Additional evidence you may wish to provide

USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that USCIS considers.

In addition to providing evidence relating to the specialty occupation criteria discussed above, you may wish to provide evidence that details the specific duties of the offered position and the nature of your business operations. Evidence may include, but is not limited to:

- A detailed statement to:
  - Explain the actual duties the beneficiary will perform for your company;
  - Indicate the percentage of time devoted to each duty;
  - State the education, experience, training, and special skills required to perform these duties; and
  - Explain how the beneficiary's education relates to the position.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
  - List all divisions in the organization;

- Identify the offered position in the chart;
- Show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
- Indicate who will direct the beneficiary, by name and job title.

- Additional information about your organization, highlighting the nature, scope, and activity of your business enterprise, along with evidence to establish the beneficiary will be employed with the duties you have set forth, such as:
  - Copies of documentary examples of work product created by current or prior employees in similar positions, such as business plans, reports, designs, blueprints, evaluations and presentations to describe your business;
  - Contractual agreements or work orders from each company who will utilize the beneficiary's services showing that the beneficiary will be performing specialty occupation duties;
  - Promotional materials, advertisements, articles, and/or press releases; or
  - Patents.

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U.S. Department of Homeland Security
USCIS – RFE RESPONSE
75 Lower Welden St.
St. Albans, VT 05479

October 1, 2018

RE: RFE RESPONSE – EAC-18-150-51715
Petitioner: Magna IV Color Imaging, Inc.
Beneficiary: Mr. Jiaqi Zhao

Dear Sir or Madam:

Please find enclosed the necessary responses and documents for the RFE RESPONSE – EAC-18-150-51715 for the H-1B petition by Magna IV Color Imaging, Inc. ("MAGNA IV") for the beneficiary, Mr. Zhao, Jiaqi ("ZHAO"). MAGNA IV unequivocally states that the position of Computer Programmer as offered by MAGNAI IV is a specialty occupation meeting the requirements of *8 C.F.R. §214.2(h)(1)(ii)(B)*.

PREPONDERANCE OF THE EVIDENCE STANDARD

MAGNA IV would like to humbly remind the USCIS Officer that the petitioning employer must only prove by a *preponderance of the evidence* that the employment position meets the requirements of *8 C.F.R. §214.2(h)(1)(ii)(B)*. Preponderance of the evidence standard means that based on the evidence it is *"more likely than not"* that the evidence satisfies the requirement that the position is a specialty occupation. The preponderance of the evidence standard does not require that the evidence demonstrate that the requirement that the position is a specialty occupation is met "beyond a reasonable doubt" but rather that the evidence meets the requirement that the position is a specialty occupation by "51 percent."

As clearly stated in the *Adjudicator's Field Manual,* "even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is 'probably true' or 'more likely than not,' the applicant or petitioner has satisfied the standard of proof." *Adjudicators Filed Manual,* Ch. 11.1(c) (citing

U.S. v. Cardozo-Fonseca, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring).

In other words, MAGNA IV is not under an obligation to prove to the USCIS Officer that the position of Computer Programmer as offered by MAGNA IV is a specialty occupation beyond the preponderance of the evidence standard. Accordingly, it would be clear and reversible error for the USCIS Officer to require MAGNA IV to prove "beyond a reasonable doubt" or by "clear and convincing evidence" that the position of Computer Programmer is a specialty occupation. Instead, as long as MAGNA IV proves that it is "more likely than not" that the evidence proves that the position of Computer Programmer is a specialty occupation, or if fifty-one percent (51%) of the evidence demonstrates that the position of Computer Programmer is a specialty occupation, then the USCIS Officer must approve the petition. Additionally, that the USCIS Officer may "some doubt" as to whether the position of Computer Programmer as proffered by MAGNA IV meets the requirements to satisfy the specialty occupation requirement *is not sufficient to deny the petition*, since the standard of proof is *preponderance of the evidence*. As such, the evidence provided by MAGNA IV and the responses submitted below demonstrates according to the *preponderance of the evidence standard* that the Petitioner's H-1B Petition for the Mr. ZHAO meets the requirements of *8 C.F.R. §214.2(h)(1)(ii)(B)*, by providing evidence that the position of Computer Programmer meets the requirements of a specialty occupation.

LEGAL FRAMEWORK

The Immigration Act of 1990 (IMMACT 90)[1] revised Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA), substituting the previous provision permitting the admission of nonimmigrant aliens "of distinguished merit and ability" with a nonimmigrant category permitting the admission of aliens seeking to enter the United States to perform services in a "specialty occupation." Section 205(c)(2) of IMMACT 90 introduced the current definition of the term "specialty occupation" in Section 214(i) into the INA:

> (1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph (2), the term "specialty occupation" means an occupation that requires–
>
> (A) theoretical and practical application of a body of highly specialized knowledge, and
>
> (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Regulations at *8 C.F.R. § 214.2(h)(4)(ii)* define "specialty occupation" as follows:

> *Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a

[1] Pub. L No. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

> specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

A petitioner is required to demonstrate that the position for which an alien's services are sought is a "specialty occupation." Regulations at *8 C.F.R. § 214.2(h)(4)(iii)(A)* provide four ways to do so:

> To qualify as a specialty occupation, the position must meet **one** of the following criteria:
>
> (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
>
> (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
>
> (3) The employer normally requires a degree or its equivalent for the position; or
>
> (4) The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.
>
> (emphasis added)

Accordingly, when properly construed, documentary evidence from one or more of the criteria in *8 C.F.R. § 214.2(h)(4)(iii)(A)* will demonstrate that the position is a "specialty occupation" under *8 C.F.R. § 214.2(h)(4)(ii)*. Additionally, MAGNA IV is not required to present evidence from the list of criteria and also prove that the position is a "specialty occupation" pursuant to the definitional element as stated in *8 C.F.R. § 214.2(h)(4)(ii)*. To require a petitioner to satisfy one of the criteria listed in *8 C.F.R. § 214.2(h)(4)(iii)(A)* and further prove that the position meets the definition of specialty occupation under *8 C.F.R. § 214.2(h)(4)(ii)* , would be—to paraphrase the U.S. District Court in *Buletini v. INS*, 860 F. Supp. 1222, 1231 (E.D. Mich. 1994)—to require a petitioner to prove that the position is a "specialty occupation" by requiring the petitioner to show that the position is a "specialty occupation." The regulation at *8 C.F.R. 214.2(h)(4)(ii)* is a definitional regulation, and the term "specialty occupation" is defined there, as are a number of other terms found in the regulations governing H-1B petitions. However, the regulation at *8 C.F.R § 214.2(h)(4)(iii)(A)* sets out the objective criteria by which to determine whether a specific job is a "specialty occupation" under 8 *C.F.R. § 214.2(h)(4)(ii)*. Meeting one of the objective criteria under *8 C.F.R § 214.2(h)(4)(iii)(A)* suffices to prove that the position is a "specialty occupation." This is important, as it appears that in the RFE provided by the USICS Officer, the USCIS Officer has purposely omitted a key qualifier under *8 C.F.R. § 214.2(h)(4)(iii)(A)(1),* namely that a specialty occupation requires that the position **normally** requires the obtainment of a bachelor's degree.

THE PETITION BY MAGNA IV SATISFIES THE REQUIREMENTS TO DEMONSTRATE THAT THE POSITION IS A SPECIALTY OCCUPATION

The following responses demonstrate how the position of Computer Programmer offered by MAGNA IV satisfies the requirements of a specialty occupation. First, the Petitioner will show how the USCIS Officer has misread and provided an unfair reading of the *Occupational Outlook Handbook* ("OOH") entry pertaining to Computer Programmers, which the federal courts have already deemed demonstrates that the position is a specialty occupation by a preponderance of the evidence. Second, MAGNA IV will demonstrate how USCIS appears to misstate the requirement that approval of an H-1B requires that the position requires a degree in a narrowly defined specific specialty. Finally, MAGNA IV will demonstrate how, notwithstanding the plain language of the OOH, the position of Computer Programmer as proffered by MAGNA IV satisfies each prong of the specialty occupation test. When reviewing the legal arguments and totality of the evidence submitted in this RFE Response, and as according to the preponderance of the evidence standard, it is clear that the position satisfies the requirements for approval as a specialty occupation.

I. USCIS Misstates the Department of Labor's Occupational Outlook Handbook Entry regarding the Occupation of Computer Programmer

At the outset, the RFE received by the USCIS Officer concludes that the documentation and record evidence does not establish that the petition meets the first prong of the H-1B regulations to establish the position is a specialty occupation, namely that: "A baccalaureate or higher degree or its equivalent is **normally** the minimum requirement for entry into the particular position." *8 C.F.R. § 214.2(h)(4)(iii)(A)(1).*

In reviewing the RFE received by USCIS, and as stated by prior decisions of the federal courts, it is clear that USCIS Officer has not engage in a fair reading of the OOH with respect to the OOH's entry for the Computer Programmer position by stating that the OOH does not demonstrate how the position of Computer Programmer satisfies the first prong of the regulations under *8 C.F.R. § 214.2(h)(4)(iii)(A)(1)*, where a position will meet the requirements of a specialty occupation, if "a baccalaureate or higher degree or its equivalent is **normally** the minimum requirement for entry into the particular position." See, *Next Generation Tech., Inc. v. Johnson*, No. 15 CV 5663 (DF), 2017 WL 4685275, (S.D.N.Y. Sept. 29, 2017). In the RFE, the USCIS Officer states that USCIS routinely references information provided by the Department of Labor's ("DOL") OOH which discusses educational prerequisites for positions. As relevant to this particular RFE, the USCIS Officer quotes the OOH as follows:

> "Most computer programmers have a bachleor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages."

Based upon a fair reading of the OOH, the position of Computer Programmer as proffered by MAGNA IV appears to qualify as a specialty occupation under *8 C.F.R. § 214.2(h)(4)(iii)(A)(1)* according to the DOL's own language by virtue of the fact that the DOL's own language states that "**most** Computer Programmers **have a bachelor's degree in computer science, or a related field**" which would demonstrate that the position **normally** requires a bachelor's degree in a specific specialty, i.e. computer science or a related field. See, *Next Generation Tech., Inc. v. Johnson.*

Indeed, according to the *Merriam-Webster Dictionary*, the word "most" means "greatest in quantity, extent, or degree" or "the majority of".[2] Additionally, according to *Merriam-Webster Dictionary,* the term "normally" means "conforming to a type, standard, or regular pattern."[3] More importantly, the term "normally" does not imply that something must **always** be the case. Indeed, when reviewing the synonyms for the word "normal", the dictionary lists the following: "average", "common", or "usual". None of these terms signify that the word "normal" means that something must always be the case. To the contrary, the word denotes there could be exceptions to the rule. This is important for the USCIS Officer to understand, since the crux of the USCIS Officer's argument is that because there appears to be some exceptions to the OOH's assertion that **most** computer programmers have a bachelor's degree in computer science, but **some** do not, that this limited exception somehow demonstrates that the OOH concludes that Computer Programmers do not **normally** have a bachelor's degree in a specific specialty vis-à-vis a computer science degree.

When using the plain language meanings of the terms "most" and "normally", the language of the OOH can be read as stating that the greatest extent or quantity, or the majority of, Computer Programmers have a bachelor's degree in computer science, or a related field. Because the greatest extent or quantity, or the majority of, Computer Programmers have a bachelor's degree in computer science, it can be stated under a preponderance of the evidence standard, that Computer Programmers having a bachelor's degree in computer science or related field conforms to a type, standard, or regular pattern, i.e. that is "normally" the case that Computer Programmers have a bachelor's degree in computer science. When this plain language is coupled with the OOH's language that the typical entry level education in the field of Computer Programmers is a bachelor's degree, it stands to reason that the OOH states under a preponderance of the evidence standard that **the position of Computer Programmer normally requires a bachelor's degree in computer science, or related field as the normal entry level education.** As such, the OOH's own language demonstrates that a Computer Programmer position is a specialty occupation under the first prong of the specialty occupation test, as the language of the OOH provides that Computer Programmer positions have a minimum of a bachelor's degree in computer science (which is a specific specialty) or a related field.

However, rather than engaging in a fair reading of the OOH, the USCIS Officer instead concludes that the OOH's own plain language does not indicate that the Computer Programmer position is a specialty occupation, since it does not establish that a bachelor's degree is **normally** required in a specific specialty, or its equivalent and that a range of educational credentials, including those less than a bachelor's degree may qualify an individual to perform the duties of a Computer Programmer. The USCIS Officer's conclusion appears to try to do two (2) things; first, it tries to imply that the word "normally" means that something must always be the case, which is not supported by evidence, and second, it ignores the language of the OOH stating that a computer science degree is normally required for Computer Programmer positions, to assert that a broad range of educational credentials may qualify an individual to perform the duties of Computer Programmer.

MAGNA IV asserts that the USICS Officer's conclusion is arbitrary and capricious, and MAGNA IV's assertion is supported by the federal courts, which, as recently as 2017, have rejected the USCIS's Officer's misreading of the OOH as it pertains to the question of whether

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[2] *Definition of "Most" Merriam-Webster Dictionary,* https://www.merriam-webster.com/dictionary/most

[3] *Definition of "Normally", Merriam-Webster Dictionary,* https://www.merriam-webster.com/dictionary/normally

Computer Programmer positions are a specialty occupation according to the language provided by the OOH.

In *Next Generation Tech., Inc. v. Johnson*, the USCIS Officer and AAO denied an H-1B petition sponsoring a Computer Programmer, in part, on the conclusion that the OOH and ONET did not provide evidence that the position was a specialty occupation. After submitting evidence from the O*NET Online stating that vast majority of Computer Programmer positions required a Bachelor's Degree (i.e. at least eighty-eight percent (88%)), and the language provided by the OOH stating that most Computer Programmer positions have a bachelor's degree in computer science, the Court found that there was no "'rational connection' between the evidence [provided in the OOH and O*NET Online] indicating that '*most* computer programmers *have* a bachelor's degree' and USCIS's determination that 'computer programmers *are not normally required to have a* bachelor's degree [in a specific specialty]." *Id.* (citing *Berrios v. Holder*, 502 F. App'x 100, 101 (2d Cir. 2012))(emphasis original). Indeed, the Court went on to further hold that according to the OOH, a Computer Programmer position is, by the OOH's own admission, a specialty occupation as follows:

> On this point, the AAO found that the Occupational Handbook "does not state [that] a U.S. bachelor's or higher degree in a specific specialty or its equivalent . . . [is] a normal minimum requirement . . . for entry into the occupation of computer programmer." **This, however, does not represent a fair reading of the Occupational Handbook.** While noting that "some employers hire workers with an associate's degree" for computer programmer positions, **the Occupational Handbook goes on to state that "[m]ost computer programmers have a bachelor's degree in computer science or a related subject.**" Occupational Handbook ("Computer Programmers/How to Become a Computer Programmer"). **Thus, if the proposed position qualifies as a computer programmer position, then the Occupational Handbook arguably demonstrates that a bachelor's degree or higher in a specific specialty is "normal[ly]" the minimum requirement for entry into the position.** *See* 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).
>
> In sum, the Court finds that USCIS disregarded "pertinent evidence" in the Record and failed to "articulate[] a satisfactory explanation for its action" in declining to find that the programmer position being offered . . . was a "specialty occupation," within the meaning of the INA and applicable regulations, and that USCIS's decision in this regard was therefore arbitrary and capricious.
>
> *Next Generation Tech., Inc. v. Johnson.* (emphasis added)

Indeed, the OOH is replete with provisions that establish through a preponderance of the evidence standard that the position of Computer Programmer normally requires the obtainment of a bachelor's degree in a specific specialty, i.e. computer science, satisfying the specialty occupation requirement under *8 C.F.R. § 214.2(h)(4)(iii)(A)(1)*:

- Under the section "Quick Facts: Computer Programmers" the OOH states that under "Typical **Entry**-Level Education" the position requires a "Bachelor's Degree";
- Under "Education" the OOH states that: "Most programmers get a degree in computer science or a related subject"; and
- Under the OOH's entry for Software Developers, under "Similar Occupations" the OOH states that "Computer Programmers" require a Bachelor's Degree for "**Entry**-Level Education."

In sum, a plain reading of the OOH, in its totality, and applying the correct legal standard of preponderance of the evidence, demonstrates that a Computer Programmer position, as offered by MAGNA IV, is a specialty occupation. Thus, if the USCIS Officer intends to use the OOH as a basis to assert that the position of Computer Programmer is not a specialty occupation, such basis will be considered arbitrary and capricious by the federal courts. As such, the OOH demonstrates, contrary to the USCIS Officer's interpretation, that the position of Computer Programmer is a specialty occupation, and the USCIS Officer should approve the H-1B petition on that basis alone.

II. USCIS Appears to Misstate the Requirement that Approval of an H-1B Requires that the Position Requires a Degree in a Specific Specialty

Although not directly addressed by the RFE provided by the USCIS Officer, MAGNA IV would like to ensure that the USCIS Officer does not attempt to misstate the requirement that a specialty occupation requires a bachelor's degree in only one specific specialty, and that occupations that allow for related fields are somehow no longer considered specialty occupations.

According to the INA, a "specialty occupation" is "an occupation that requires ... attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." *8 U.S.C. § 1184(i)(1)(B).* In addition to the INA, the relevant regulations have further defined the term "specialty occupation" to mean:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in **a specific specialty, or its equivalent**, as a minimum for entry into the occupation in the United States.
>
> (citing, 8 C.F.R. § 214.2(h)(4)(ii)) (emphasis added).

Thus, according to the regulations, a specialty occupation is an occupation that requires theoretical and practical application of highly specialized knowledge requiring the attainment of a bachelor's degree or higher in **a** specific specialty, **or its equivalent**. The fact that the regulation provides for an equivalency means that an occupation that allows for more than one specific specialty for entry in the position and can still qualify as a specialty occupation, as long as the position requires a theoretical and practical application of a body of highly specialized knowledge. For the purposes of this RFE Response, this argument appears to be unnecessary, as

the OOH already indicates that a bachelor's degree in a specific specialty or its related equivalent is normally required for entry in the field, e.g. computer science or related field. As such the USCIS Officer cannot infer by the phrase "or related field" that the position is no longer a specialty occupation since other disciplines may provide the educational background necessary for entry into the position.

Furthermore, notwithstanding the language provided in the OOH, the position of Computer Programmer could still qualify as a specialty occupation, even if more than one area of specialized knowledge can provide the practical application of a body of highly specialized knowledge. Indeed, as according to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Servs.,* 839 F. Supp. 2d 985, 994, (S.D. Ohio 2012) there "is no apparent requirement that the specialized study [required to meet the requirement of a specialty occupation must] be in a single academic discipline as opposed to a specialized course of study." Instead, USCIS must consider whether the occupation "requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge." *Id.* at 997 (citing, *Tapis Int'l v. I.N.S.,* 94 F.Supp.2d 172 (D. Mass. 2000).

In other words, the regulations do not require that a specialty occupation require obtainment of a bachelor's degree in a single academic discipline, or only one (1) specific specialty. Instead, the regulations require that the position require a bachelor's degree in some form of **a** specific specialty, which may include specifically denoted degree programs, such as computer science, but may also include other degrees, where such degrees demonstrate specialized knowledge. This analysis squares with the OOH, which states that most Computer Programmer positions have a bachelor's degree in computer science or a related field.

Thus, for the purposes of this RFE Response, it is clear that the position offered by MAGNA IV of Computer Programmer, requiring a Bachelor's degree in Computer Science, or a closely-related field, satisfies the specific specialty requirement under *8 C.F.R. §214.2(h)(4)(i)(A).*

III. The Position of Computer Programmer Satisfies at Least One (1) of the Regulatory Requirements that the Position is a Specialty Occupation

Although the OOH already demonstrates that the proffered position of Computer Programmer is a specialty occupation warranting approval of the H-1B petition, MAGNA IV has also provided additional evidence within this RFE Response demonstrating that the position of Computer Programmer is a specialty occupation.

In order to demonstrate that the position qualifies as a specialty occupation, the proffered position must only meet *one* of the following criteria:

- *8 C.F.R. § 214.2(h)(4)(iii)(A)(1);* A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- *8 C.F.R. § 214.2(h)(4)(iii)(A)(2);* The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- *8 C.F.R. § 214.2(h)(4)(iii)(A)(3);* The employer normally requires a degree or its equivalent for the position; or

- *8 C.F.R. § 214.2(h)(4)(iii)(A)(4);* The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As the foregoing argument and attached evidence will demonstrate, the position of Computer Programmer as proffered by MAGNA IV meets at least one (1), if not all four (4) of the of the criteria listed above. However, as clearly stated in the regulatory language, the position must only meet one (1) of the criteria by a preponderance of the evidence to satisfy the requirement of proving that the position is a specialty occupation. If the preponderance of the evidence demonstrates that the position meets at least one (1) of the requirements, then the position will be considered a specialty occupation and the petition should be approved.

A. *8 C.F.R. § 214.2(h)(4)(iii)(A)(1);* A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position

First, MAGNA IV would like to reiterate that the OOH itself demonstrates that a baccalaureate of higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As already stated in this RFE Response, a fair, rational and plain language interpretation of the OOH demonstrates by a preponderance of the evidence that the Computer Programming position *normally* requires a bachelor's degree in computer science or a related field. This language alone meets the requirements of 8 *C.F.R. § 214.2(h)(4)(iii)(A)(1)* when determining whether a baccalaureate or higher degree or its equivalent is *normally* the minimum requirement for entry into the particular position.

Second, to further support its position that the position of Computer Programmer *normally* requires a minimum of a bachelor's degree in computer science or a related field, MAGNA IV would like to point the USCIS Officer to the O*NET On-Line. The O*NET Online specifically states that within the position category *15-1131 – Computer Programmers* at least eighty-eight percent (88%) of employers *require a bachelor's degree for the position.* Thus, it is clear that the overwhelming vast majority of positions (e.g. "most" of the positions) under the general category of Computer Programmer ***normally*** require a minimum of a bachelor's degree in computer science or related field.

By combining the language of the OOH with the O*NET On-line, it is clear that although the position of Computer Programmer does not *always* require a bachelor's degree in computer science or a related field, *most* i.e. the vast majority of, Computer Programmer positions do require a bachelor's degree in computer science or a related field. The USICS Officer must understand that the regulation at 8 *C.F.R. § 214.2(h)(4)(iii)(A)(1)* does not require that *all* Computer Programmer positions require a bachelor's degree in computer science, only that the position *normally* requires a bachelor's degree in computer science or a related field. As such, by the OOH's own admission, and the statistics provided by the O*NET On-line, the preponderance of the evidence demonstrates that the position of Computer Programmer is a specialty occupation under 8 *C.F.R. § 214.2(h)(4)(iii)(A)(1).*

Documents Provided:

Exhibit B - Case Law:

- *Next Generation Tech., Inc. v. Johnson*, No. 15 CV 5663 (DF), 2017 WL 4685275, S.D.N.Y. Sept. 29, 2017); and

- *Residential Fin. Corp. v. U.S. Citizenship & Immigration Servs.,* 839 F. Supp. 2d 985, 994 (S.D. Ohio 2012)

Exhibit C – Department of Labor Documents:

- OOH – Computer Programmers

- O*Net Online – 15-1131 – Computer Programmers

B. *8 C.F.R. § 214.2(h)(4)(iii)(A)(2);* The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree

MAGNA IV has provided a detailed analysis of job postings for similar positions that also require a minimum of a bachelor's degree in computer science to fill the position of Computer Programmer. As such, this evidence further demonstrates by a preponderance of the evidence that the degree requirement is common to the industry for Computer Programming positions in parallel positions among *similar (i.e. not exact)* organizations pursuant to *8 C.F.R. § 214.2(h)(4)(iii)(A)(2).*

MAGNA IV has also provided expert opinion letters that further attest that the degree requirement is common to the industry; including, Mr. Casey Wingers, System Administrator at MAGNA IV who states that the position of Computer Programmer requires a minimum of a Bachelor's Degree in Computer Science and is common to the industry. Mr. Chonghui Li, a Computer Scientist at Adobe Systems who has stated that due to the complexities of the position of Computer Programmer at MAGNA IV it is a position that normally requires a Bachelor's Degree in Computer Science, and this comports with industry standards. Dr. Mark Smith, a Senior Lecturer at the University of Central Arkansas, stating that the position of Computer Programmer at MAGNA IV is a position that normally requires a Bachelor's Degree in Computer Science. And finally, Dr. Michael Keith Lavine, adjunct faculty at University of Maryland University College, stating that the position of Computer Programmer at MAGNA IV unequivocally requires the position to have a minimum of a Bachelor's Degree in Computer Science.

As such, the petitioner has demonstrated that the position meets the requirements pursuant to *8 C.F.R. § 214.2(h)(4)(iii)(A)(2).*

Documents Provided:

Exhibit D – Job Postings for Similar Positions

Exhibit E – Expert Letters with C.V.s

C. *8 C.F.R. § 214.2(h)(4)(iii)(A)(3);* The employer normally requires a degree or its equivalent for the position.

Because of the highly complex duties required for the position of Computer Programmer, MAGNA IV has historically *normally* required a degree in computer science or a related field for the position. Indeed, MAGNA IV has provided USCIS with a detailed job description that provides a comprehensive overview of the job requirements of the position, and why a bachelor's degree in Computer Science is required, especially as it relates to Mr. ZHAO. Additionally, MAGNA IV has provided an Organizational Chart, which is meant to provide the USCIS Officer to provide further evidence that MAGNA IV has a small but highly qualified IT team that must provide services for the entirety of the organization, and report directly to the President of MAGNA IV, Kristi Dannelley. Please note that Mr. Billy Trent, while listed under the IT team heading, is not a computer programmer, instead, his position is "Storefront Administrator" as indicated in the submitted organization chart and detailed job description.

As such, the preponderance of the evidence demonstrates that the position satisfies the requirements to be considered a specialty occupation pursuant to *8 C.F.R. § 214.2(h)(4)(iii)(A)(3).*

To prove this particular requirement, the following documents have been provided:

Exhibit F – Employer Support Documents

- Computer Programmer Detailed Job Description
- MAGNA IV Organizational Chart
- MAGNA IV Brochure

Exhibit G – Resumes for Computer Programmers at Magna IV

- Jiaqi Zhao – Current Computer Programmer (Beneficiary)
- [redacted] – Current Computer Programmer
- [redacted] – Current Computer Programmer
- [redacted] – Former Computer Programmer

D. *8 C.F.R. § 214.2(h)(4)(iii)(A)(4)* The nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree

Finally, MAGNA IV has provided detailed job description to provide evidence showing that the specific duties of the position of Computer Programmer are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree. As such, the preponderance of the evidence demonstrates that the position satisfies the requirements to be considered a specialty occupation pursuant to *8 C.F.R. § 214.2(h)(4)(iii)(A)(4).*

Documents Provided:

Exhibit F – Employer Support Documents

- Computer Programmer Detailed Job Description

- MAGNA IV Organizational Chart
- MAGNA IV Brochure

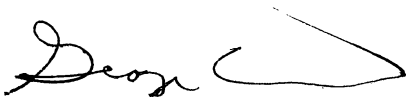
CONCLUSION

In conclusion, as the preponderance of the evidence demonstrates, the position of Computer Programmer proffered by MAGNA IV satisfies at least one (1) of the requirements to prove that the position is a specialty occupation, and more than likely meets all of the requirements. As such, the Petitioner has proven by a preponderance of the evidence that the position meets the requirements to be considered a specialty occupation.

Thank you for your consideration of the materials presented, and we look forward to your favorable determination.

Sincerely,

CROSS, GUNTER, WITHERSPOON, AND GALCHUS, P.C.

By: 

George Ernst
On Behalf of Misty Borkowski

CC: Autumn Williams
/enclosures

RE: RFE RESPONSE – EAC-18-150-51715
Petitioner: Magna IV Color Imaging, Inc.
Beneficiary: Mr. Jiaqi Zhao

Exhibits:

Exhibit A – USCIS RFE RESPONSE

Exhibit B - Case Law:

- *Next Generation Tech., Inc. v. Johnson*, No. 15 CV 5663 (DF), 2017 WL 4685275, S.D.N.Y. Sept. 29, 2017)
- *Residential Fin. Corp. v. U.S. Citizenship & Immigration Servs.*, 839 F. Supp. 2d 985, 994 (S.D. Ohio 2012)

Exhibit C – Department of Labor Documents:

- OOH – Computer Programmers
- O*Net Online – 15-1131 – Computer Programmers
- OOG – Software Developers

Exhibit D – Job Postings for Similar Positions

Exhibit E – Expert Letters with C.V.s

- Case Winters
- Chonghui Li
- Dr. Mark Smith
- Dr. Michael Lavine

Exhibit F – Employer Support Documents

- Computer Programmer Detailed Job Description
- MAGNA IV Organizational Chart
- MAGNA IV Brochure

Exhibit G – Resumes for Computer Programmers at Magna IV

- Jiaqi Zhao – Current Computer Programmer (Beneficiary)
- [redacted] – Current Computer Programmer
- [redacted] – Current Computer Programmer
- [redacted] – Former Computer Programmer

DUPLICATE COPY OF THIS RFE RESPONSE IS INCLUDED
PLEASE FORWARD TO THE KCC FOR CONSULAR PROCESSING UPON APPROVAL

Exhibit A – USCIS RFE RESPONSE

July 17, 2018

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St.
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

MAGNA IV COLOR IMAGING INC
c/o MISTY WILSON BORKOWSKI
CROSS GUNTER WITHERSPOON & GALCHUS
500 PRES CLINTON AVE STE 200
LITTLE ROCK, AR 72201

EAC1815051715

RE: JIAQI ZHAO
I-129, Petition for a Nonimmigrant Worker

***STUDENT* REQUEST FOR EVIDENCE**

IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE NUMBER. THIS PAGE MUST BE SUBMITTED WITH THE REQUESTED EVIDENCE. MAIL THIS NOTICE AND YOUR RESPONSE TO THE ADDRESS ABOVE.

You are receiving this notice because U.S. Citizenship and Immigration Services (USCIS) requires additional evidence to process your form. Please provide the evidence listed on the attached page(s). Include duplicate copies if you are requesting consular notification. **Your response must be received in this office by October 12, 2018.**

Please note that you have been allotted the maximum period allowed for responding to a Request For Evidence (RFE). The time period for responding cannot be extended. 8 CFR 103.2(b)(8)(iv). Because many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible, but no later than the deadline provided above. If you do not respond to this notice within the allotted time, your case may be denied. The regulations do not provide for an extension of time to submit the requested evidence.

You must submit all requested evidence at the same time. If you submit only some of the requested evidence, USCIS will consider your response a request for a decision on the record. 8 CFR 103.2(b)(11).

If you submit a document in any language other than English, the document must be accompanied by a full and **complete** English translation. The translator must certify that the translation is accurate and he or she is competent to translate from that language to English. **If you submit a foreign language translation in response to this request for evidence, you must also include a copy of the foreign language document.**

Processing of your form or benefit request will resume upon receipt of your response. If you have not heard from USCIS within **60 days of responding**, you may contact the USCIS Contact Center at **1-800-375-5283**. If you are hearing impaired, please call the USCIS Contact Center TDD at **1-800-767-1833.**

S

U.S. Citizenship and Immigration Services (USCIS) has reviewed your petition/application and supporting evidence. You did not submit sufficient evidence to establish that the proffered position qualifies as a specialty occupation requiring the attainment of a bachelor's or higher degree in a specific specialty. Therefore, additional evidence is needed.

The Petitioner

Documentation submitted with you petition indicates that your company provides printing and marketing services.

Specialty Occupation

You filed a Petition for Nonimmigrant Worker, Form I-129, seeking H-1B nonimmigrant classification. With your petition, you submitted a Labor Condition Application (LCA) that lists the offered position as Computer Programmer. The H-1B classification applies to individuals who will perform services in a specialty occupation. A specialty occupation is defined as an occupation that requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States.

To process your petition and determine eligibility, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items;
- Submit none of the suggested items and instead submit other evidence to satisfy the request;
- Explain how the evidence in the record already establishes eligibility; and/or
- Request a decision based on the record.

To qualify as a specialty occupation, the position must meet at least one of the below regulatory criteria. U.S. Citizenship and Immigration Services (USCIS) interprets the term "degree" in the criteria below to mean not just any degree, but a bachelor's or higher degree in a *specific* specialty, or its equivalent, that is directly related to the offered position.

With your response to this notice, identify which of the specialty occupation regulatory criteria you feel has been satisfied. If you feel the offered position qualifies under multiple criteria, identify the evidence that you feel satisfies each criterion.

Degree is Normally Minimum Requirement

You may establish eligibility by showing that a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

You submitted a certified LCA which lists the SOC (ONET/OES) code number as 15-1131 and the Occupation Title of Computer Programmer.

USCIS routinely references information provided in the Department of Labor's *Occupational Outlook Handbook* (*OOH*) which discusses the educational prerequisites for positions. The *OOH* indicates the following educational requirements for Computer Programmer positions:

"Most computer programmers have a bachelor's degree in computer science or a related

subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages."

As the *OOH* does not indicate that Computer Programmer positions require a minimum of a baccalaureate degree in a *specific* specialty, or its equivalent, it does not establish that this is a specialty occupation. Further, a range of educational credentials, including those less than a bachelor's degree may qualify an individual to perform the duties of a Computer Programmer.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Relevant documentation from an authoritative career resource, such as the Department of Labor's *OOH* which describes the work environment and lists the duties, education, training, skills, and other qualifications and/or requirements for the occupation. Include a statement describing how the particular position relates to the occupation listed in the career guide and how the information in the career guide demonstrates that a bachelor's or higher degree in a *specific* specialty, or its equivalent, is normally the minimum requirement for the particular position.
- Any evidence you believe will establish that a bachelor's or higher degree in a *specific* specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

Degree Common to the Industry

You may establish eligibility by showing that the degree requirement of a bachelor's degree or higher in a *specific* specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.

You did not submit any evidence for this criterion.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations. Job postings or advertisements should include:
  - The date and source of the job posting or announcement; and
  - A detailed description of the duties of the position and the educational, training, and experience requirements of the position.
- Documentation to establish that the company or firm offering the position in these job postings or announcements is within your industry and is similar to your organization.
- Any documentation which establishes that the submitted job postings or advertisements represent the industry standards for the position.
- Copies of letters or affidavits from firms or individuals in the industry attesting that similar organizations routinely employ and recruit only individuals with a bachelor's or higher degree in a *specific* specialty, or its equivalent. Any letter or affidavit should be supported by documentation of the following:
  - The writer's qualifications as an expert;
  - How the writer's conclusions were reached; and
  - The basis for the writer's conclusions, supported by copies or citations of any materials used.
- Any evidence you wish to provide that you feel satisfies this criterion.

Position So Complex or Unique

You may establish eligibility by showing that the particular position is so complex or unique that it can be performed only by an individual with a bachelor's or higher degree in a *specific* specialty, or its equivalent.

To satisfy this criterion, you submitted:

- A company support letter describing your company, the duties of the proffered position, and the beneficiary's qualifications.

The evidence you submitted is insufficient. The petitioner's letter of support offers general information about the petition, the beneficiary and a brief description of the proffered specialty occupation position. By describing the duties to be performed by the beneficiary without evidence to support the position is not an indication that the proffered position qualifies as a specialty occupation. The duties and responsibilities you have described are vague and do not establish the need for an individual who possesses the minimum of a baccalaureate degree in a specific field of study. For example, you state that the beneficiary will:

- Manage Mindfire Campaigns in building html pages for cross-medial projects;
- Assist in developing, supporting and extending web storefronts powered by Pageflex, PrestaShop and Wordpress;
- Build Studio templates for customizable or static items and general site maintenance;
- Site skinning, report building and database implementation;
- Collaborate with departments to streamline the workflow between systems;
- Interact with other personnel in solving complex business and technical problems;
- Work with scratch coding in PHP, MySQL;
- Work with projects involving Angularjs, nodejs, mongodb, C#, Javascript;
- Write query to select data and also modify data from SQL database; and
- Work with terminal Windows and Linux servers.

It is not apparent from limited descriptions like these how such duties establish the proffered position is so complex or unique that it can be performed only by an individual with a bachelor's or higher degree in a *specific* specialty, or its equivalent.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Letters from an industry-related professional association indicating that the particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a *specific* specialty, or its equivalent.
- Letters or affidavits from firms or individuals in the industry attesting that the particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a *specific* specialty, or its equivalent. Any letter or affidavit should be supported by documentation of the following:
  - The writer's qualifications as an expert;
  - How the writer's conclusions were reached; and
  - The basis for the writer's conclusions, supported by copies or citations of any materials used.
- Copies of trade publications or other articles within your industry which demonstrate and highlight the specific complex or unique functions of the particular position, which can only be performed only by an individual with a bachelor's degree in a *specific* specialty, or its equivalent.
- Any evidence you wish to provide that you feel satisfies this criterion.

Employer Normally Requires Degree or its Equivalent
You may establish eligibility by showing that you normally require a bachelor's degree or higher in a *specific* specialty, or its equivalent, for the position.

To satisfy this criterion, you submitted:

- A company support letter describing your company, the duties of the proffered position, and the beneficiary's qualifications.

While you claim that the offered position requires a degree, your opinion alone cannot establish the position as a specialty occupation. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, as the minimum for entry into the occupation as required by the Act. If USCIS was limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- Copies of your present and past job postings or announcements for the offered position showing that you require applicants to have a minimum of a bachelor's or higher degree in a *specific* specialty, or its equivalent.
- Documentary evidence of your past employment practices for the position, including:
  - Documentation which lists the number of employees hired for the position in the last two years;
  - Copies of employment or pay records identifying past and present employees in this position;
  - Copies of degrees and/or transcripts to verify the level of education and field of study of each individual you hired for this position in the last two years. Additionally, provide evidence to establish the duties that the individuals performed for this position, such as official position descriptions, job offer letters, job postings, or performance reviews; and
  - An organizational chart or diagram, showing your organizational structure and staffing levels.
- Documentation which lists the educational, experience, training, and skills requirements of the offered position, such as official position descriptions, job offer letters, or job postings.
- Any evidence you wish to provide that you feel satisfies this criterion.

Nature of Specific Duties So Specialized and Complex
You may establish eligibility by showing that the nature of the specific duties of the offered position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's or higher degree in a *specific* specialty, or its equivalent.

To satisfy this criterion, you submitted:

- A company support letter describing your company, the duties of the proffered position, and the beneficiary's qualifications; and
- A letter of support from Dr. Emre Celebi.

The evidence you submitted is insufficient. As discussed above, the petitioner's letter of support offers

general information about the petition, the beneficiary and a brief description of the proffered specialty occupation position. It does not establish that the nature of the specific duties of the offered position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's or higher degree in a *specific* specialty, or its equivalent.

You provided a letter of support from Dr. Emre Celebi that states that the duties of the proffered position require the minimum of a Bachelor's degree in Computer Science; however, the letter is not support by any documentary evidence.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to:

- An explanation of the specific duties, as they relate to your products and services, and how the nature of those duties of the offered position are so specialized and complex, that they are usually associated with the attainment of a bachelor's degree or higher in a *specific* field of study; provide an explanation of what differentiates your products and services from other employers in the same industry. Be specific and provide documentation to support any explanation of specialization and complexity.
- Letters or affidavits from firms, individuals, professional associations, or customers attesting that the nature of your products and services are so specialized and complex that a bachelor's level of education, or higher, in a *specific* field of study is a prerequisite for the duties of the offered position. Any letter or affidavit should be supported by documentation of the following:
  - The writer's qualifications as an expert;
  - How the writer's conclusions were reached; and
  - The basis for the writer's conclusions, supported by copies or citations of any materials used.
- Copies of trade publications or other articles about your company that highlights the nature of your products and services and demonstrates that the specific duties of the offered position are so specialized and complex that a bachelor's level of education, or higher, in a specific field of study is a prerequisite for entry into the position.
- Any evidence you wish to provide that you feel satisfies this criterion.

Additional evidence you may wish to provide

USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that USCIS considers.

In addition to providing evidence relating to the specialty occupation criteria discussed above, you may wish to provide evidence that details the specific duties of the offered position and the nature of your business operations. Evidence may include, but is not limited to:

- A detailed statement to:
  - Explain the actual duties the beneficiary will perform for your company;
  - Indicate the percentage of time devoted to each duty;
  - State the education, experience, training, and special skills required to perform these duties; and
  - Explain how the beneficiary's education relates to the position.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
  - List all divisions in the organization;

- Identify the offered position in the chart;
- Show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
- Indicate who will direct the beneficiary, by name and job title.

- Additional information about your organization, highlighting the nature, scope, and activity of your business enterprise, along with evidence to establish the beneficiary will be employed with the duties you have set forth, such as:
  - Copies of documentary examples of work product created by current or prior employees in similar positions, such as business plans, reports, designs, blueprints, evaluations and presentations to describe your business;
  - Contractual agreements or work orders from each company who will utilize the beneficiary's services showing that the beneficiary will be performing specialty occupation duties;
  - Promotional materials, advertisements, articles, and/or press releases; or
  - Patents.

Exhibit B - Case Law

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEXT GENERATION TECHNOLOGY, INC. and Puspita DEO,

Plaintiffs,

-against-

Jeh JOHNSON, Secretary, Department of Homeland Security; Loretta E LYNCH, Attorney General of the United States; Alejandro MAYORKAS, Director, United States Citizenship and Immigration Services,

Defendants.

15 cv 5663 (DF)

MEMORANDUM AND ORDER

DEBRA FREEMAN, United States Magistrate Judge:

In this action, which is before this Court on consent pursuant to 28 U.S.C. 636(c), plaintiffs Next Generation Technology, Inc. ("NGT") and Puspita Deo ("Deo") (collectively, "Plaintiffs") challenge, under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq.*, the final decisions of the United States Citizenship and Immigration Services ("USCIS"), revoking its approval of an H-1B visa petition filed by NGT on behalf of Deo and denying NGT's subsequently amended petition. Plaintiffs now move for summary judgment in their favor, claiming that the decisions of USCIS, made under the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101, 1184, were arbitrary and capricious. Defendants Jeh Johnson, Loretta E. Lynch, and Alejandro Mayorkas (collectively, "Defendants" or the "Government"),[1]

[1] Although the caption of this case has not been changed, it is the Court's understanding that Jeh Johnson, Loretta E. Lynch, and Alejandro Mayorkas no longer hold the positions of Secretary of the Department of Homeland Security, United States Attorney General, and Director of USCIS, respectively. The Court understands that Elaine C. Duke became Acting Secretary of the Department of Homeland Security on July 31, 2017, Jeff Sessions became United States

cross-move for summary judgment dismissing this action, arguing that the administrative decisions at issue are entitled to deference. For the reasons set forth below, the parties' respective motions (Dkts. 26, 27) are each granted in part and denied in part, and this case is remanded to the agency for further proceedings consistent with this Memorandum and Order.

BACKGROUND

A. The H-1B Visa

The INA allows U.S. employers to petition for H-1B nonimmigrant visas on behalf of alien beneficiaries. 8 U.S.C. § 1184(c)(1). As framed by the statute, this type of visa enables beneficiaries to be admitted temporarily to the United States, in order to work in "specialty occupation[s]" that require both "theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." 8 U.S.C. § 1184(h)(3). Pursuant to the regulations implementing the INA, a position must at least be found to meet one of the following four criteria, for it to be considered a "specialty occupation" under the statute:

> (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
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> (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
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> (3) The employer normally requires a degree or its equivalent for the position; or

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Attorney General on February 9, 2017, and James McCament became Acting Director of USCIS on March 31, 2017.

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> (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A); *see also* V-B, Inc., 2017 WL 959834 at *3 (D.H.S., U.S.C.I.S. 2017) ("[T]he criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary, but not necessarily sufficient, to meet the statutory and regulatory definition of specialty occupation." (citing *Defensor v. Meissner*, 201 F.3d 384, 386-87 (5th Cir. 2000)).

In addition, the regulations dictate that the beneficiary must possess at least one of the following four qualifications:

> (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
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> (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
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> (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
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> (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

8 C.F.R. § 2.14.2(h)(4)(iii)(C)(1)(4).[2]

[2] Based on this Court's review of the parties' motions, it appears that Deo's qualifications as a beneficiary pursuant to 8 C.F.R. § 2.14.2(h)(4)(iii)(C)(1)(4) are not in question. Accordingly, the Court finds no need to consider this portion of the pertinent regulations.

B. NGT's Petitions[3]

NGT is "an information technology firm specialized in providing IT services, custom software solutions and development for its clients." (R. at US144.) On April 1, 2009, NGT petitioned USCIS for an H-1B visa on Deo's behalf for her employment as a "programmer." (*Id.* at US493 ("Initial Petition," referenced in the Record by petition receipt number WAC0914850406).) This Initial Petition stated that the term of Deo's intended employment would be three years, from October 1, 2009 to September 30, 2012, the maximum amount of time permitted by the regulations.[4] (*Id.*) It also stated that Deo had a Ph.D. in Computer Science from Dublin City University, in Ireland. (*Id.* at US510.)

On June 9, 2009, USCIS issued a Request for Evidence ("RFE") with respect to NGT's Initial Petition, seeking additional information. (*Id.* at US525-28.) As it appeared that NGT was "engaged in the business of consulting, employment staffing, or job placement," USCIS stated that it required clarification of NGT's "employer-employee relationship with the beneficiary," as well as evidence from the "end-client" sufficient to establish that "a specialty occupation exist[ed] for the beneficiary." (*Id.* at US527.)

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[3] The background facts set forth herein are taken from the Certified Administrative Record, filed with the Court on May 13, 2016 (Dkt. 22) (referred to herein as "R." or the "Record"). For the purposes of this Memorandum and Order, the Court will cite to pages in the Record that have been numbered as "US___." Subsequent to the filing of the Record, the Government supplemented it with an additional four pages that, according to the Government, had been considered in connection with the decisions at issue in this case, but had been inadvertently omitted from the Record, as initially filed. (*See* Declaration of Nelsy De La Nuez, Esq., dated Dec. 12, 2016 ("Nuez Decl.") and the exhibit thereto (Dkt. 28, Ex. A).)

[4] Under the applicable regulation, an approved "H-1B petition in a specialty occupation . . . shall be valid for a period of up to three years[,] but may not exceed the validity period of the labor condition application. 8 C.F.R. § 214.2(h)(9)(iii)(A)(1).

In return, NGT submitted a letter dated July 18, 2009, clarifying that the beneficiary would be "developing SAP solutions package for Packaging Industries" and that this work was being done "in conjunction" with NGT's client/partner, SAP America, Inc. ("SAP"), rather than for a client. (*Id.* at US529.) NGT further clarified that the work was being completed "in-house" and not at "the client location," and provided the name and contact information for the internal project manager overseeing the work. (*Id.* at US529-31.)

On July 27, 2009, USCIS approved NGT's Initial Petition. (*Id.* at US491.) On November 22, 2009, however, Deo entered the United States as a B-2 visitor, instead of proceeding to apply for her H-1B visa at the U.S. Consulate in Amsterdam, as originally planned.[5] (*Id.* at US14, US728.) On March 1, 2010, NGT submitted an amended petition to USCIS for an H1-B visa on Deo's behalf (*id.* at US1098-127 ("Amended Petition," referenced in the Record by petition receipt number WAC1010250458)), and, on or about June 9, 2010, NGT submitted a second amended petition (*id.* at US697-706 ("Second Amended Petition," referenced in the Record by petition receipt number WAC1020250476)).

On August 2, 2010, USCIS issued an RFE with respect to the Second Amended Petition, requesting the following: (1) an itinerary of employment for the beneficiary,[6] (2) information sufficient to establish, by a preponderance of evidence, that NGT had a valid employer-employee relationship with Deo, such that it possessed the right to control and direct her work; and

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[5] Approval of NGT's Initial Petition did not mean that Deo was then granted, or was entitled to receive, the H-1B visa itself. Rather, several additional steps would have been necessary, before the visa could have been obtained. (*See* R. US239); *see also* U.S. Department of State, Bureau of Consular Affairs, *U.S. Visas: Temporary Worker Visas*, (Sept. 27, 2017, 10:04 AM), https://travel.state.gov/content/ visas/en/employment/temporary.html.

[6] In its earlier, July 18, 2009, submission, NGT had provided USCIS with an itinerary of employment for Deo. (R. at US531-32.) Based on USCIS's subsequent request, it is unclear whether the agency had reviewed the earlier-submitted document.

(3) evidence demonstrating that NGT had sufficient specialty occupation work immediately available for the beneficiary. (*Id.* at US787-92.) Each request was accompanied by a non-exhaustive list of sample evidence that could address the request. (*Id.*) The second and third requests specifically listed, as the type of evidence that could constitute an appropriate response: "Copy of signed Employment Agreement between [NGT] and the beneficiary detailing the terms and conditions of employment." (*Id.*)

On September 10, 2010, NGT responded to the RFE with additional evidence, including an itinerary and signed employment agreement between NGT and Deo, dated May 21, 2010. (*Id.* at US800-05, US819.) The itinerary listed Deo's title as "Research Engineer (Programmer)" and stated that she would "develop computational models to optimize the extraction process . . . of active bio-molecules from their natural resources." (*Id.* at US801, US806.) The itinerary listed Deo's dates of employment as May 24, 2010 to September 28, 2012. (*Id.*) In reference to Deo's duties while employed by NGT, the employment agreement stated: "Employee shall report to such offices or locations as assigned by Employer, and shall be available to work as needed and directed by the management of NGT or the management of the Client location where she is reporting . . . ." (*Id.* at US813.) Also in response to the RFE, NGT stated that "the minimum requirement for entry into the position [of programmer] is attainment of a Bachelor's degree in Engineering or Technology (or its equivalent), plus 1-2 years of experience." (*Id.* at US801.)

On September 26, 2010, having found NGT's evidence to be insufficient, USCIS issued a Notice of Intent to Revoke ("NOIR") its approval of the Initial Petition. (*Id.* at US238.) USCIS found that "the statement of facts contained in the [Second Amended Petition] was not true and correct," because (1) "it [did] not appear that the petitioner [was] the entity that [would] be providing such [specialty occupation] duties to the beneficiary," and (2) "a query of public

record information discovered that on March 18, 2010, [NGT] had filed for Chapter 11 Bankruptcy," thus calling into question NGT's ability to pay Deo the required wage. (*Id.* at US240-42.) On this second point, USCIS noted that NGT had previously provided USCIS with its 2008 U.S. Corporate Tax Return showing that its gross sales were $5.2 million, and it had not notified the agency of its subsequent bankruptcy. (*Id.*) USCIS asserted in the NOIR that, for these reasons, NGT had violated H-1B requirements, and further noted that:

> [without] valid contracts between the petitioner and the actual end-client firm ultimately involved with the beneficiary's computer related duties, the evidence does not establish the work to be completed; that the duties to be performed are those of a computer programmer position, and, thus, a specialty occupation position; and that the work will be available for the beneficiary when he [sic] enters the United States.

(*Id.* at US243-44.) The NOIR afforded NGT 30 days to submit further evidence in response. (*Id.* at US238.)

NGT responded to the NOIR by a letter from its counsel, dated October 18, 2010 (*id.* at US256),[7] explaining that, although "the term 'consultant'" had been used in reference to Deo and NGT "does supply expertise to third parties, the employment relationship [in question] remains completely and solely between [NGT] and [Deo]" (*id.*; *see also id.* at US260). NGT's counsel reiterated that NGT was "*not providing the beneficiary as a consultant to SAP America, Inc.*" (*Id.* at US257 (emphasis in original).) The letter further noted that, due to delays caused by the beneficiary and time spent awaiting adjudication of its H-1B petition, the initial project that NGT had intended for Deo, entitled "Professional Industry Knowledge for Packaging Application Consulting" (the "PIK PAC"), had been largely completed. (*Id.* at US259-60, US536.) Thus,

[7] It appears from a date stamp on the letter that it may have been received by USCIS on October 28, 2010. (*See* US245.)

the letter stated that NGT intended to employ Deo mainly as a "high skilled programmer . . . to develop [a] computational model for the prediction of the extractability of active bio-molecules from their natural resources for Next Generation Technology SCRD (Specialty Chemicals Research and Development)" ("NGT/SCRD"). (*Id.* at US334.) The letter further indicated that NGT also anticipated needing Deo's help implementing the already-developed SAP PIK PAC and modifying "the solution as per the customers' need." (*Id.*) NGT's counsel noted that the SAP PIK PAC project had arisen from a partnership agreement between NGT and SAP America, and explained that "the two corporations [were] in a partnership arrangement to create a new software package to be marketed to a particular industry." (*Id.* at US257 (emphasis omitted).) NGT also submitted a letter from its bankruptcy attorney, dated October 20, 2010, indicating that the company intended to reorganize, rather than liquidate, through Chapter 11 bankruptcy, and that it was "continuing to operate fully . . . under the supervision of the SDNY Bankruptcy Court and the United States Trustee."[8] (*Id.* at US311-14.)

On November 30, 2010, USCIS issued a Notice of Revocation ("NOR") of its approval of NGT's Initial Petition. (*See id.* at US232-37.) In reviewing the evidence submitted by NGT in response to the August 2010 RFE and the September 2010 NOIR, USCIS found that NGT had failed to demonstrate that there would be specialty occupation work available for Deo. (*Id.* at US234.) USCIS noted that NGT's partnership agreement with SAP America (*see id.* at US266-310) was signed and commenced after Deo's proposed employment start date (*id.* at US235).

[8] According to Plaintiffs, the Bankruptcy Court's Order states that NGT is "authorized to conduct its affairs and use, acquire, and dispose of property free of any restrictions of title 11 of the United States Code, the Bankruptcy Rules of Bankruptcy Procedure and/or this Court." (Motion for Summary Judgment, dated Nov. 7, 2016 ("Pl. Mem.") (Dkt. 26), at 14.) It is unclear from the Record whether Plaintiffs presented the actual Bankruptcy Court Order to USCIS for its consideration.

USCIS explained that "the fact that [NGT] may at some time in the future be fully qualified [to provide specialty occupation work] [did] not exempt [NGT] from being eligible at the time of the filing." (*Id.* at US236.) Given that NGT had stated that SAP America was its partner and not its end client, and on the apparent assumption that not all of Deo's work was intended to be performed for the partnership, USCIS also found that there was insufficient evidence from the actual end client concerning Deo's proposed duties. (*Id.* at US235.) On this point, USCIS wrote that, as "the very nature of [NGT's] consulting business indicated that[,] eventually, [Deo] would be outsourced to client sites to implement specific projects and/or assist clients with other technical issues," the evidence provided that pertained to only one project could not "be deemed representative of [Deo's] entire schedule while in the United States." (*Id.* at US237.) Regarding NGT's Chapter 11 Bankruptcy, USCIS explained that, while the letter from bankruptcy counsel and Notice of Chapter 11 Bankruptcy produced by NGT noted NGT's "attempts to enter new contracts" and its commitment of "over $400,000 in marketing funds for the year 2009 in order to grow its SAP practice," those submissions "fail[ed] to address the actual in-house project" at issue. (*Id.* at US236.) Further, USCIS stated that NGT had provided no documentation or evidence from the Bankruptcy Court regarding NGT's ability to reorganize or liquidate pursuant to a plan; rather, NGT had provided "[m]ere assertions of counsel," which were not evidence. (*Id.*) Based on this reasoning, USCIS revoked its approval of NCT's Initial Petition and denied its Second Amended Petition. (*Id.* at US237, US697.)

On December 16, 2010, NGT filed an appeal to the Administrative Appeals Office ("AAO"), challenging the revocation by USCIS of its approval of the Initial Petition. (*See id.* at US116.) By cover letter, NGT also asked for an additional 30 days to submit a supporting brief, and requested that, upon receipt of the brief, the agency consider the submission "as a Motion to

Reopen/Reconsider before forwarding to the AAO for adjudication." (*Id.* at US117.) On January 11, 2011, NGT submitted a brief and additional evidence in support of its appeal. (*See id.* at US125.) The brief clarified that, contrary to USCIS's findings, NGT's role in developing the SAP PIK PAC solution for its partner SAP was NGT's "contribution" to the entities' partnership rather than a "contradict[ion] of the partnership arrangement." (*Id.* at US127.) NGT also noted that USCIS had chosen to ignore evidence of NGT's prior agreements with SAP that were entered into prior to the petition filing date, and to focus exclusively on the fact that the formal agreement between NGT and SAP, which was produced to the Government as evidence that Deo was not being employed as a consultant, was entered into after the filing date of the petition. (*Id.* at US128.)

In addition, NGT argued that, to the extent USCIS' decision was based on NGT's Chapter 11 filing, the decision was erroneous because it presumed, without justification, that NGT would not be able to continue to function during and after bankruptcy. (*Id.* at US129.) As evidence of its ability to employ Deo and to pay her the wage described in its petitions, NGT produced a letter from an "angel investor" committing to invest $200,000 in NGT, and an investment agreement by which Donald J Dymond committed to invest $90,000 in NGT. (*Id.* at US80-81.) These documents showed that the funds from both investors were specifically allocated for implementation of the SAP PIK PAC project. (*Id.*) NGT also submitted an industry/peer review of the anticipated SAP PIK PAC solution from Jim Shaw ("Shaw"), an industry peer with "almost 35 years of professional management experience." (*Id.* at US169.) Shaw's letter stated that, after carefully reviewing and vetting NGT's project with his "industry colleagues," he had concluded that the SAP PIK PAC was an "exciting software solution that will receive strong support within the packaging industry." (*Id.* at US169-70.) In a subsequent

letter dated September 5, 2012, in which NGT asked the AAO to expedite its decision, NGT further informed the AAO that NGT had recently received a $200,000 National Science Foundation grant for Deo's second planned project, by which she would develop a computational model for the prediction of the extractability of active bio-molecules from their natural resources. (*Id.* at US175-76.)

On November 3, 2012, the AAO dismissed NGT's appeal. (*Id.* at US29-38.) The AAO found that NGT had failed to prove that the proposed position qualified as a "specialty occupation" and that NGT had paid Deo the required wage, and had failed to establish that a "credible offer of H-1B caliber employment existed at the time of filing and for the duration of the beneficiary's requested stay." (*Id.* at US32, US37.) The notice of the dismissal of the appeal informed NGT that it could file a motion to reconsider or a motion to reopen, if it "believe[d] [that] the AAO inappropriately applied the law in reaching its decision," or if NGT had "additional information" that it wished to have considered. (*Id.* at US29.) On November 25, 2012, NGT filed a motion to reconsider the AAO's decision denying its appeal of USCIS's revocation of approval of the Initial Petition. (*Id.* at US55.) In that motion, NGT argued that it had been "presented, time after time, with arguments that appear[ed] after [NGT] [had] adequately responded to requests for evidence." (*Id.*) NGT complained that "[t]his situation of 'moving targets' [made] it extremely difficult for [NGT] to meaningfully present evidence and respond to [USCIS] and AAO concerns." (*Id.*) In its motion, NGT stressed that it had ample in-house opportunities for the beneficiary with no end-client involvement, further described the complexities of Deo's proposed roles and responsibilities, argued that a bachelor's degree was, "in fact, the normal requirement in the industry [for Deo's position] according to all sources," and noted that, because "the beneficiary was not ever able to work for the petitioner" due to the

revocation of Initial Petition, "failure to pay [Deo] was never a possibility." (*Id.* at US60-1, US67, US74.)

On July 2, 2014, USCIS sent NGT a Notice of Derogatory Information ("NDI"), which gave NGT an opportunity to respond to potential bases for the agency's adverse decision of which NGT was previously unaware. (*Id.* at US23-27.) NGT responded to the NDI on July 31, 2014. (*Id.* at US11-22.)

On October 16, 2014, the AAO issued a final denial of NGT's appeal. (*Id.* at US3-10.) As a preliminary matter, the AAO found that NGT had "sufficiently addressed the issues raised" in the NDI, such that those issues need "not be discussed further." (*Id.* at US4 n. 1.) The AAO also concluded that "[i]n light of the evidence of record," the AAO was "persuaded by counsel that the SAP/Petitioner agreements [did] not establish that the beneficiary would be working as an employee of SAP." (*Id.* at US9.) Nonetheless, the AAO found that the revocation of approval for the Initial Petition and denial of the Second Amended Petition were proper. (*Id.* at US3-10.) It stated that NGT had failed to make the following showings: (1) that H-1B caliber work existed for Deo at the time of filing or that a work itinerary existed for her; (2) that Deo would be employed as a programmer for the duration of her employment; (3) that the proposed position qualified as a specialty occupation; and (4) that NGT did, in fact, pay Deo the required wage in compliance with its obligations. (*Id.* at US3-10.)

C. Procedural History

Plaintiffs filed a Complaint in this Court on July 20, 2015, seeking a declaratory judgment that "NGT is a qualified U.S. employer engaged in an employer-employee relationship with [Deo]," that Deo's "position qualifies as a specialty occupation, and that "[e]mployment in her specialty occupation is available" (*see* Complaint, dated July 20, 2015 ("Compl.") (Dkt. 1)

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¶¶ 51-53), and also seeking an Order requiring Defendants to grant Plaintiffs' "motion to reconsider [USCIS's revocation of its approval of the Initial Petition] and [to] reinstate [Deo] in H1-B status," and granting such other further equitable relief as the Court "deems just and proper" (*id.*, at 18.) Defendants filed an Answer on January 20, 2016. (*See* Answer, dated Jan. 20, 2016 ("Ans.") (Dkt. 17).)

On November 7, 2016, Plaintiffs filed their summary judgment motion (*see* Pl. Mem., and exhibits thereto (Dkt. 26)), asking that the Court enter judgment ordering Defendants "to grant the motion to reconsider and reinstate [Deo] in H1-B status" (*id.*, at 21), *nunc pro tunc* to the date of USCIS's revocation of NGT's Initial Petition (*see id.* ¶ 43). The Government filed its opposition and cross-motion for summary judgment on December 12, 2016, arguing that USCIS's decisions were not arbitrary or capricious and must therefore be affirmed. (*See* Notice of Motion, dated Dec. 12, 2016 (Dkt. 27); Nuez Decl. (Dkt. 28); Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment, dated Dec. 12, 2016 ("Def. Mem.") (Dkt. 29).) Plaintiffs filed a reply memorandum of law in further support of their motion and in opposition to Defendants' cross motion on January 9, 2017. (Plaintiffs' Reply to Defendants' Opposition and Defendants' Cross Motion to Dismiss" ("Pl. Reply Mem.") (Dkt. 30).) The Government filed a reply memorandum in further support of its cross-motion on February 6, 2017. (Dkt. 31.)

At the outset, this Court notes that it cannot "reinstate" Deo's "H1-B status" as requested by Plaintiffs, because Deo was never an H1-B visa holder. (*See supra*, at n.5.)[9] As the

[9] Although Plaintiffs seem to claim that the approval of NGT's Initial Petition meant that Deo had been conferred "H-1B status" (*see* Pl. Mem., at 3), the Government correctly states that the notice granting NGT's Initial Petition did "not in itself grant any immigration status and [did] not guarantee that" Deo would "be found to be eligible for a visa" (Def. Mem., at 7; *see also* R. US1074). The Government also notes that the Record does not show that Deo ever "obtained

challenged agency actions are USCIS's decisions to revoke approval of NGT's Initial Petition and to deny NGT's Second Amended Petition, the Court will focus its attention on the question of whether those decisions should be set aside.

DISCUSSION

I. PLAINTIFFS' STANDING

A federal court must satisfy itself that it has subject matter jurisdiction over a case before it may act. *See Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., Div. of Ace Young Inc.*, 109 F.3d 105, 107 (2d Cir. 1997) ("[T]he failure of the parties to contest the district court's authority to hear a case does not act to confer federal jurisdiction since a challenge to subject matter jurisdiction cannot be waived and may be raised either by motion or *sua sponte* at any time." (citations omitted)). Here, although Defendants do not raise a jurisdictional defense in their motion papers, they did assert in their Answer that Deo lacks standing to bring this action. (Ans., at 8.) Standing is "[a]n important component of the Article III jurisdictional limit of federal courts to deciding 'cases' or 'controversies.'" *All. For Envtl. Renewal, Inc. v. Pyramid Crossgates Co.*, 436 F.3d 82, 85 (2d Cir. 2006); *see also* U.S. Const. art. III.

The Second Circuit has found that beneficiaries of immigrant visa petitions have Article III standing to challenge the denial of such petitions in federal court. *See Mantena v. Johnson*, 809 F.3d 721, 730, 736 (2d Cir. 2015) (declining to reach question of whether alien has constitutional right to procedural due process, but nonetheless holding that alien beneficiary of former employer's immigration petition "has Article III and prudential, as well as statutory, standing to raise her claims in the federal courts"). While this Circuit has not yet addressed

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an H-1B visa from the consulate or otherwise obtained status as an H-1B nonimmigrant." (Def. Mem., at 7.)

whether the beneficiaries of *non*immigrant visa petitions similarly have standing to seek judicial relief when faced with petition denials by USCIS, courts in other jurisdictions have expanded upon the reasoning in *Mantena* to find that such plaintiffs do have standing to sue. *See, e.g., Tenrec, Inc.* v. *United States Citizenship & Immigrations Servs.*, 2016 WL 5346095, at *6-8 (D. Or. Sept. 22, 2016).

Further, this Court notes that courts in this district have permitted employer-petitioners of visa applications, made on behalf of alien employee beneficiaries, to challenge final determinations of USCIS. *See, e.g., Just Bagels Mfg., Inc. v. Mayorkas*, No. 12 cv 1358 (JLC), 900 F. Supp. 2d 363, 376 (S.D.N.Y. 2012); *Glara Fashion, Inc. v. Holder*, No. 11 cv 889 (PAE), 2012 WL 352309, at *6 (S.D.N.Y. Feb. 3, 2012). As it appears that plaintiff NGT has standing "to assert these rights as [its] own," the Court need not reach the issue of Deo's standing in order to decide the pending motions. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264, n. 9 (1977) ("Because of the presence of . . . at least one individual plaintiff who has demonstrated standing to assert these rights as his own . . . we need not consider whether the other individual and corporate plaintiffs have standing to maintain the suit."); *see also Horne v. Flores*, 557 U.S. 433, 446 (2009) (citing *Vill. of Arlington Heights* for the proposition that the Court need not reach the issue of standing for one petitioner when the other petitioner "clearly has standing to challenge the lower courts' decisions").

II. LEGAL STANDARDS APPLICABLE TO THE PARTIES' MOTIONS

Pursuant to the APA, federal courts have jurisdiction to review "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. In reviewing agency determinations, courts employ a deferential standard, "under which such actions may only be disturbed if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

with law, or are unsupported by substantial evidence." *Glara*, 2012 WL 352309 at *6 (*citing* 5 U.S.C. § 706(2)(A), (E) (citation omitted)). A court will not disturb an agency finding that is "supported by reasonable, substantial, and probative evidence in the record when considered as a whole." *Id.* (citing *Wu Biao Chen v. INS,* 344 F.3d 272, 275 (2d Cir. 2003)). The Court should neither "engage in an independent evaluation of the cold record, nor substitute its judgment for that of the agency." *Just Bagels*, 900 F. Supp. 2d at 373 (S.D.N.Y. 2012) (citations omitted.)

Still, "[w]hile judicial review of agency decisions is highly deferential, it is not without teeth." *Raj & Co. v. U.S. Citizenship & Immigration Servs.*, 85 F. Supp. 3d 1241, 1248 (W.D. Wash. 2015). An agency determination should be found to be arbitrary and capricious where "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat. Res. Def. Council v. U.S. E.P.A.*, 658 F.3d 200, 215 (2d Cir. 2011) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).)

The question of "whether an agency's decision is arbitrary and capricious is a legal issue amenable to summary disposition." *Glara*, 2012 WL 352309 at *5 (citation omitted); *see also id.* ("Where, as here, a party seeks review of agency action under the APA and the entire case on review is a question of law, summary judgment will generally be appropriate." (citing *Citizens Against Casino Gambling in Erie Cty. v. Hogen*, 2008 WL 2746566, at *25 (W.D.N.Y. July 8, 2008))). Under the Federal Rules of Civil Procedure, summary judgment may be granted where there "is no genuine dispute as to any material fact" and the moving party is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

An agency determination may be remanded to the defendant agency for additional fact-finding, "when the record does not support the agency action, when the agency has not considered all relevant factors, or when the reviewing court simply cannot evaluate the challenged action on the basis of the record before it." *Nat'l Audubon Soc. v. Hoffman*, 132 F.3d 7, 14 (2d Cir. 1997).

III. THE AGENCY EITHER DISREGARDED EVIDENCE OR FAILED TO EXPLAIN ITS REASONS FOR REJECTING EVIDENCE IN THE RECORD THAT COULD HAVE MET THE STATUTORY REQUIREMENTS FOR AN H1-B VISA.

A. Evidence That the Proposed Position for Deo Was a "Specialty Occupation"

The law provides that H-1B visas are only available for work in "specialty occupations." *See* 8 U.S.C. § 1184(h)(3). As set out above (*see* Background, *supra*, at Section A), for a position to qualify as a specialty occupation under the INA, that position must require both: (1) "theoretical and practical application of a body of specialized knowledge," and (2) "attainment of a bachelor's or higher degree in the specific specialty," 8 U.S.C. § 1184(h)(3); *see also* US247 (USCIS stating, in its NOIR, that the "critical element [in determining whether a position is a specialty occupation] is not the title of the position or an employer's self-imposed standards but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act").

Here, NGT submitted evidence to USCIS that could have been found sufficient to meet each of these two requirements.

1. The Position Requirement of "Theoretical and Practical Application of a Body of Specialized Knowledge"

In support of its compliance with the first statutory requirement, NGT provided the following description for the position that Deo would hold for one of her two listed projects:

> Dr. Puspita Deo will develop computational model for the prediction of the extractability of active bio-molecules from their natural resources . . . . To perform the computational modeling work the beneficiary needs to have hands on experience in simulation, modeling and optimization using Matlab and C++ . . . . The beneficiary will utilize her expertise in Technology to perform the following professional duties:
>
> - Analysis, research, design, write specification, and develop software code consistent with our needs
> - Design new application and develop application prototypes
> - Promote efficient user utilization of the system
> - Co-operate with and provide technical support to project teams and members and associate
> - Develop and maintain proficiency in utilizing technical and analytical tools to give optimum results to the management and business
> - Analysis, conversion coding, code walkthrough, unit and integration testing

(R. at US801.)

The Government contends that the bulleted duties "were only generic job descriptions containing no specific information about the actual work Deo would be doing," and argues that it was appropriate for USCIS to discount NGT's more specific description of Deo's development of a computational model because the documents did not establish that Deo would be working on this project at the time of filing. (Def. Mem., at 16; R. at US219.) USCIS, however, failed to give adequate reasons as to why the position description for the PIK PAC project, which *was*

established at the time of filing, did not require "theoretical and practical application of a body of highly specialized knowledge."

In response to USCIS' RFE of June 9, 2009, NGT submitted an executed assignment agreement between NGT and SAP America that was effective as of January 1, 2009. (R. at US533-35.) That agreement gave NGT the right to develop the PIK PAC for SAP America. (*Id.* at US529.) NGT also attached a project description that described the "roles and responsibilities" for each position needed for the project. (*Id.* at 559.) The responsibilities for Deo's role – that of "Sr. Programmer/Programmer" – included: "Technical program coding; Developing the functional program; Algorithm development; and Debugging the existing programs." (*Id.* at US560.) The project description also included details about the overall project, stating that NGT would be developing "enterprise resource planning software . . . customized . . . to . . . business processes [that] are prevalent and common in the Paper packaging [industry]." (*Id.* at US539.)

Although USCIS stated that "[e]ach position must be evaluated based upon the nature and complexity of the actual job duties to be performed with that specific employer," it never articulated why the enumerated PIK PAC duties for a specific employer (NGT) were incompatible with a specialty occupation. (*Id.* at US247.) As a result, the Court cannot find that, with respect to determining whether the proposed position involved the "theoretical and practical application of a body of specialized knowledge," 8 U.S.C. § 1184(h)(3), USCIS "considered the pertinent evidence, examined the relevant factors, and articulated a satisfactory explanation for its action." *Noroozi v. Napolitano*, No. 14 cv 2012 (PAE), 905 F. Supp. 2d 535, 541 (S.D.N.Y. 2012) (citing *J. Andrew Lange, Inc. v. FAA,* 208 F.3d 389, 391 (2d Cir. 2000)).

2. The Position Requirement of "Attainment of a Bachelor's or Higher Degree in the Specific Specialty"

In support of their arguments as to whether the Record does or does not show that NGT's proposed position for Deo would meet the second statutory requirement – that a person holding the position have a bachelor's or higher degree in the specific specialty, both parties appropriately cite to the United States Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook* (2012) (the "Occupational Handbook"). (*See* Def. Mem., at 14; Pl. Reply. Mem., at 11.) "Reliance on the Occupational Handbook is reasonable in determining whether a proposed position satisfies the requirements of a 'specialty occupation.'" *Blacher v. Ridge*, No. 4 cv 8004 (LAP), 436 F. Supp. 2d 602, 609 (S.D.N.Y. 2006).

Two portions of the Occupational Handbook are relevant here. First, as to whether a bachelor's degree or higher is required for a programmer position, that publication states: "Most computer programmers have a bachelor's degree; however, some employers hire workers with an associate's degree." (R. at US100; *see also* Occupational Handbook ("Computer Programmers/How to Become a Computer Programmer/Education").) Somehow, based on this and on a document that NGT submitted to USCIS that indicated 11 percent of computer programmer positions required some college or no degree and six percent required only a high school diploma (R. at US107), the Government argues that "the record demonstrates that USCIS properly determined that computer programmers are not normally required to have a bachelor's degree" (Def. Mem., at 14); *see also* 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (indicating that one potential criterion for demonstrating that a position constitutes a "specialty occupation" is where "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position"). Even affording appropriate deference to the Government's interpretation of the statutory and regulatory requirements, this Court is at a loss to see a

"rational connection" between the evidence indicating that "*most* computer programmers *have* a bachelor's degree" and USCIS's determination that "computer programmers *are not normally required to have* a bachelor's degree." *See Berrios v. Holder*, 502 F. App'x 100, 101 (2d Cir. 2012).

Further, Plaintiff draws the Court's attention to an internal USCIS memorandum, stating that USCIS will

> generally consider the position of programmer to qualify as a specialty occupation. This will especially be true if the position involves providing clients with programming analysis, custom designs, modification, and/or problem solving software. Positions such as these are usually associated with consulting firms.

(Pl. Reply Mem., Tab B.) In this instance, where the Record demonstrates that NGT is a consulting firm and that Deo would be working on software for clients (*see* R. at US123) – two factors listed by the agency itself as weighing in favor of its already "general" view that a programmer position qualifies as a specialty occupation – USCIS's determination to the contrary about the position at issue in this case would appear to lack "reasonable, substantial, and probative evidence in the record." *See Glara*, 2012 WL 352309 at *6.

The second relevant portion of the Occupational Handbook relates to whether to whether a bachelor's degree or higher *in the specific specialty* is required for a programmer job. On this point, the AAO found that the Occupational Handbook "does not state [that] a U.S. bachelor's or higher degree in a specific specialty or its equivalent . . . [is] a normal minimum requirement . . . for entry into the occupation of computer programmer." (R. at US37.) This, however, does not represent a fair reading of the Occupational Handbook. While noting that "some employers hire workers with an associate's degree" for computer programmer positions, the Occupational Handbook goes on to state that "[m]ost computer programmers have a bachelor's degree in

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computer science or a related subject." Occupational Handbook ("Computer Programmers/How to Become a Computer Programmer"). Thus, if the proposed position qualifies as a computer programmer position, then the Occupational Handbook arguably demonstrates that a bachelor's degree or higher in a specific specialty is "normal[ly]" the minimum requirement for entry into the position. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

In sum, the Court finds that USCIS disregarded "pertinent evidence" in the Record and failed to "articulate[] a satisfactory explanation for its action" in declining to find that the programmer position being offered for Deo by NGT was a "specialty occupation," within the meaning of the INA and applicable regulations, and that USCIS's decision in this regard was therefore arbitrary and capricious. *Noroozi*, 905 F. Supp. 2d at 541.

B. Evidence That NGT and Deo Would Be in a Valid Employer-Employee Relationship

Only a "United States employer" that has "an employer-employee relationship [with the beneficiary], as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of [the beneficiary]," can file an H-1B petition on the beneficiary's behalf. 8 C.F.R. 214.2(h)(2)(i)(A); 8 C.F.R. 214.2(h)(4)(ii)(2). Based on common-law principles, as articulated in *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318 (1992), and *Clackamas Gastroenterology Assoc. v. Wells*, 538 U.S. 440 (2003), USCIS has derived 11 factors (the "Neufeld Factors") for consideration in determining whether a valid employer-employee relationship exists. (*See* Memorandum from Donald Neufeld, Associate Director, Serv. Ctr. Operations, USCIS to Serv. Ctr. Dirs., (Jan. 8, 2010) (the "Neufeld Memorandum"); *see also Broadgate Inc. v. U.S. Citizenship & Immigration Servs.*, 730 F. Supp. 2d 240, 246 (D.D.C. 2010) (dismissing with prejudice an action to invalidate the Neufeld Memorandum and concluding that "the Memorandum establishes interpretive guidelines for the implementation of

Regulation [8 C.F.R. § 214.2(h)(4)(ii)], and . . . does not amend the Regulation by repudiating or being irreconcilable with it"). The factors are used to establish whether, based on the totality of the circumstances, the employer has submitted evidence sufficient to establish that it has the right to control the beneficiary's work. (*Id.*)

The Neufeld Factors are as follows:

(1) Does the petitioner supervise the beneficiary and is such supervision off-site or on-site?

(2) If the supervision is off-site, how does the petitioner maintain such supervision, i.e. weekly calls, reporting back to main office routinely, or site visits by the petitioner?

(3) Does the petitioner have the right to control the work of the beneficiary on a day-today basis if such control is required?

(4) Does the petitioner provide the tools or instrumentalities needed for the beneficiary to perform the duties of employment?

(5) Does the petitioner hire, pay, and have the ability to fire the beneficiary?

(6) Does the petitioner evaluate the work-product of the beneficiary, i.e. progress/performance reviews?

(7) Does the petitioner claim the beneficiary for tax purposes?

(8) Does the petitioner provide the beneficiary any type of employee benefits?

(9) Does the beneficiary use proprietary information of the petitioner in order to perform the duties of employment?

(10) Does the beneficiary produce an end-product that is directly linked to the petitioner's line of business?

(11) Does the petitioner have the ability to control the manner and means in which the work of the beneficiary is accomplished?

(Neufeld Memorandum, at 3-4.)

In this case, much of USCIS's apparent concern regarding the NGT petitions centered on whether Deo was, in fact, to be employed by NGT. That concern was not unfounded. Deo's employment agreement with NGT states that she "shall report to such offices or locations as assigned by Employer, and shall be available to work as needed and directed by the management of NGT or the management *of the Client location where she is reporting*." (R. at US326 (emphasis added).) The possibility that Deo could have been placed at a third-party worksite supports an inference that NGT would not have had the power to "hire, pay, fire, supervise, or otherwise control" her work. 8 C.F.R. 214.2(h)(4)(ii)(2). Indeed, USCIS has found that such third-party "placements are likely to require close review in order to determine if the required relationship exists." (Neufeld Memorandum at 2.) Accordingly, USCIS reasonably requested additional information sufficient to establish that NGT would have the right to control Deo's work for the duration of her employment term. (*See* R. at US250 (requesting, in the NOIR, "valid contracts between the petitioner and the actual end-client firm ultimately involved with the beneficiary's computer related duties").) Ultimately, one of the stated grounds upon which USCIS revoked the Initial Petition was that NGT had purportedly failed to provide "a comprehensive description of the beneficiary's proposed duties from an authorized representative of the petitioner's client or clients." (*Id.* at US235.) Similarly, the AAO denied NGT's appeal, in part, because NGT supposedly failed "to specifically establish the nature of the beneficiary's employment throughout the course of the requested validity period." (*Id.* at US9.)

As NGT noted in its responses to USCIS, however, it actually did provide the requested information. For example, NGT provided an employment itinerary for the PIK PAC project, which stated that the project was being "developed in-house," and that Deo would report to an internal NGT manager, "Mr. Anil Pattnaik," for the duration of the project, which was expected

to be completed "on or about February 2012." (*Id.* at US531-32.) In a response to the NOIR, NGT's counsel also represented that NGT would not be "providing the beneficiary as a consultant to SAP America, Inc." (*id.* at US257 (emphasis omitted)), but rather that Deo would "work solely for [NGT] to complete this work" (*id.*). NGT additionally provided an "Itinerary of Services" for the project Deo would complete for NGT/SCRD. (*Id.* at US143.) That itinerary states that Deo would work on that project in-house and "communicate with the end-client via internet connection." (*Id.*) It also lists Deo's duties, dates of employment on the specific project, and contact information for the NGT employee who would serve as Deo's employer/supervisor for the project. (*Id.*) NGT further clarified, in support of its appeal to the AAO, that

> [NGT] (and not the end-client) can hire or fire the beneficiary and control the nature of her work. [NGT], and not the end-client, supervise[s] the beneficiary's work. The beneficiary reports to a supervisor in [NGT's] organization, and not to someone in the end-client's organization . . . the beneficiary, through internet connection, has access to the end-client's computer system and data.

(*Id.* at US147.)

Based on this evidence, many, if not all, of the Neufeld Factors seem to have weighed in NGT's favor. As to the first factor, NGT informed USCIS that it was intending to supervise Deo, with supervision on-site (*id.* at US531); this renders the second factor (the nature of supervision, if off-site) inapplicable. As to the third factor, NGT represented that, because the Project was to be completed in-house, NGT would have the exclusive right to control Deo's work on a day to day basis. (*Id.* at US147.) As to the fourth factor, NGT indicated that it would "provide and maintain such facilities, equipment, supplies, and personnel as it deem[ed] necessary" for the performance of Deo's duties. (*Id.* at US328.) As to the fifth factor, NGT informed USCIS that it would have the ability to hire, pay, and fire Deo. (*Id.* at US326-27.) As

to the sixth factor, NGT stated that it would conduct a review of Deo's performance on a monthly basis. (*Id.* at US148.) As to the seventh factor, NGT stated that it was planning to issue Deo a W-2 at the end of each year, and would claim her as an employee for tax purposes. (*Id.* at US147.) As to the eighth factor, NGT stated that it would provide Deo with employee benefits. (*Id.* at US147, US165-66.) As to the ninth factor, it is likely, based on the terms of NGT's agreement with SAP, that Deo would use NGT's proprietary information in order to perform the duties of employment. (*See id.* at US167.) As to the 10th factor, NGT represented that the beneficiary would produce an end-product that would be directly linked to the petitioner's line of business. (*Id.* at US537-38.) Finally, as to the 11th factor, NGT indicated that it would have the ability to control the manner and means in which the work of the beneficiary would be accomplished. (*Id.* at US147.)

Based on this, it does not appear from the Record that USCIS gathered all necessary evidence, or considered "all relevant factors," in analyzing NGT's proposed employer-employee relationship with Deo. *Nat'l Audubon Soc.*, 132 F.3d at 14 (2d Cir. 1997).

C. Evidence That NGT Could Pay Deo the Established Wage

An employer's H1-B petition may be denied if the employer "has substantially failed" to demonstrate that it will pay the nonimmigrant employee the prevailing wage. 8 C.F.R. § 214.2(h)(4)(i)(B)(5); 8 U.S.C. § 212(n)(1). As noted in the USCIS Adjudicator's Field Manual,

> [if the] financial condition of the petitioner is so questionable as to call into question whether the petitioner really intends to employ the alien as claimed, evidence of financial ability may be requested. This is because the financial standing of the petitioner, when taken into consideration with other factors, may be [an] indication that the petition is an accommodation and not a valid job offer.

USCIS, *Adjudicator's Field Manual*, Ch. 31.3(g)(5) H1-B Classification and Documentary Requirements, (Sept. 27, 2017, 11:00 AM), https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-13593/0-0-0-13813.html#0-0-0-511 (last visited Sept. 27, 2017 at 11 AM).

Here, it was within USCIS's discretion to discount the letter from NGT's bankruptcy attorney as insufficient to show that NGT was able to pay the beneficiary the established wage. USCIS, however, never addressed other evidence provided by Plaintiff, including a letter from an angel investor, a separate investment agreement, and a National Science Foundation grant for the specific project on which Deo would be working (*see* R. at US78-81), that could have supported a finding that NGT would have the financial means to pay Deo as required. As the agency either failed to consider, or inexplicably discounted, a significant amount of evidence on the Record regarding NGT's financial condition, the Court cannot find that USCIS's rejection of NGT's petitions on this ground was "supported by reasonable, substantial, and probative evidence in the [R]ecord when considered as a whole." *Glara*, 2012 WL 352309 at *6.

Overall, USCIS's explanations of its actions are insufficient to enable the Court to determine if the agency simply failed to consider the evidence submitted by NGT that would have favored approval of its petitions, or if the agency in fact considered that evidence and, for some reason, discounted it. As USCIS did not squarely address much of NGT's evidence, or specify what additional evidence NGT could have produced to support its petitions, this Court cannot fully evaluate the agency's actions. Under these circumstances, it is appropriate for the Court to remand this matter to USCIS for reconsideration and/or a more complete explanation of (a) the revocation of its approval of NGT's Initial Petition, and (b) the denial of NGT's Second Amended Petition. *See Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (The "proper course" upon finding that "the agency has not considered all relevant factors . . . is to

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remand to the agency for additional investigation or explanation."); *see also Fuentes v. Holder*, 548 F. App'x 736, 739 (2d Cir. 2013) (remanding USCIS and Board of Immigration Appeals decisions that denied petitioner's immigration application for Temporary Protected Status, to the appropriate agency for "additional agency explanation").

IV. DEFENDANTS DID NOT VIOLATE PLAINTIFFS' DUE-PROCESS RIGHTS, AS PROPER NOTICE WAS PROVIDED.

Plaintiffs also raise a due process claim (*see* Compl. ¶¶ 46-48; Pl. Mem., at 17-18), alleging that USCIS's decisions continuously included "additional reasons for denial without prior notice" (Pl. Reply Mem., at 26), thereby depriving Plaintiffs of "a full and fair opportunity to present [Deo's] claims." *Burger* v. *Gonzales*, 498 F.3d 131, 134 (2d Cir. 2007). USCIS, however, did not deprive Plaintiffs of adequate notice and an opportunity to respond.

First, the agency's RFEs were "communicated by regular or electronic mail" and specified the type of additional evidence required by the agency. 8 C.F.R. § 103.2(b)(8)(iv); *see* R. at US525-28, 787-92. The RFEs also provided NGT with notice of the deadline for response. 8 C.F.R. § 103.2(b)(8)(iv); *see* R. at US525, US787 (informing NGT of the date by which it needed to respond). The information provided by USCIS was "sufficient to give [NGT and Deo, on whose behalf the petitions had been submitted] adequate notice and sufficient information to respond." *Id.*

Second, the content of the NOIR was in compliance with the applicable regulations. When USCIS issues an NOIR, the Notice must "contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal," which is 30 days. 8 C.F.R. § 214.2(h)(11)(iii)(B). In this instance, USCIS supplied a statement of the grounds for the intended revocation and duly notified NGT of its 30-day reply window to respond. (*See* R. at US238-44.)

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Third, at other stages in the process of its consideration of NGT's petitions, USCIS consistently offered NGT opportunities to submit additional evidence in response to concerns raised by the agency. (*See id.* at US232-37 (NOR discussing grounds of revocation and informing NGT that it could appeal the decision); *id.* at US23-7 (NDI notifying NGT of derogatory information of which it was unaware, which could be used as a basis for revocation by USCIS under 8 C.F.R. 103.2(b)(16)(i)); *id.* at US3-10, US29-38 (AAO decisions denying NGT's appeals and informing NGT of basis for denial and that it could file a motion for reconsideration or a motion to reopen in compliance with 8 C.F.R. 103.2(b)(8)(iv)).)

Plaintiffs, though, contend that their due-process rights were violated by the fact that, in their view, the Government's notices and decisions "continue[d] to raise new issues to which Plaintiffs had previously responded . . . and were unaware were under scrutiny." (Pl. Reply Mem., at 27.) The Court finds that Plaintiffs have not shown such a due-process violation. Although the NOIR and ultimate revocation could have been more clear, it is still evident that each raised the same reasons why USCIS had determined the petitions to be insufficient. Specifically, each indicated that NGT had not provided sufficient evidence to establish that it, and it alone, would be responsible for managing Deo's work. (*See* R. at US121, US242.) Regardless of whether this was true or whether the evidence submitted by NGT was adequately addressed by USCIS (*see* Discussion above), USCIS apparently drew the conclusion that another employer/client would likely be managing Deo's work, obligating that employer/client to provide a description of the services required. (*Id.*) USCIS also raised, in the NOIR, the issue of whether NGT's bankruptcy would preclude it from paying Deo the prevailing wage, and then cited the same issue as a basis for its decision in its ultimate Notice of Revocation. (*Id.* at US242.) The fact that, as discussed above, USCIS may have disregarded evidence supplied by

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NGT that would have supported a contrary determination does not support a conclusion that Plaintiffs were deprived of proper notice and opportunity to respond. *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (finding that an agency does not violate an alien's due-process rights when the agency's decision is in compliance with a valid regulation).

Accordingly, the Government is entitled to summary judgment dismissing Plaintiffs' due-process claim.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for summary judgment (Dkt. 26) is granted, and Defendants' cross-motion for summary judgment (Dkt. 27) is denied, to the extent that this Court finds that, in determining that NGT's Initial Petition should be revoked and its Second Amended Petition denied, USCIS disregarded or failed to explain why it discounted substantial evidence in the Record that would have potentially supported a determination that NGT had met the requirements of 8 U.S.C. § 1184(c)(1) for approval of an H1-B visa petition for the beneficiary, Deo, and that USCIS's decisions were thus arbitrary and capricious. As to Plaintiffs' due-process claim, however, Plaintiffs' motion for summary judgment is denied and Defendants' cross-motion for summary judgment is granted, and that claim is hereby dismissed with prejudice.

The Clerk of Court is directed to terminate the motions at Dkts. 26 and 27, and to remand this matter to the United States Citizenship and Immigrations Services for further proceedings consistent with this Memorandum and Order. Upon remand, USCIS is directed to reconsider its decisions regarding the H1-B visa petitions at issue here, in light of the evidence of Record

favorable to Plaintiffs that is summarized herein, and, if USCIS decides upon reconsideration to discount that evidence, it is directed to articulate its reasons for doing so.

Dated: New York, New York
September 29, 2017

SO ORDERED

DEBRA FREEMAN
United States Magistrate Judge

Copies to:

All Counsel (via ECF)

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Westlaw.

839 F.Supp.2d 985
(Cite as: 839 F.Supp.2d 985)

H

United States District Court,
S.D. Ohio,
Eastern Division.
RESIDENTIAL FINANCE CORPORATION,
Plaintiff,
v.
U.S. CITIZENSHIP AND IMMIGRATION SERVICES, Defendant.

Case No. 2:12–cv–00008.
March 12, 2012.

Background: Employer brought action against the United States Citizenship and Immigration Services, challenging defendant's denial of its petition to obtain H–1B visa status on behalf of an alien applicant for market research analyst position. Employer filed motion for summary judgment and government moved to dismiss and for summary judgment.

Holdings: The District Court, Gregory L. Frost, J., held that:
(1) court had subject matter jurisdiction, and
(2) denial of H–1B visa status for market research analyst position was arbitrary, capricious, and an abuse of discretion.

Plaintiff's motion granted.

West Headnotes

[1] Aliens, Immigration, and Citizenship 24 207

24 Aliens, Immigration, and Citizenship
24IV Admission and Visas in General
24IV(F) Visa Proceedings
24k207 k. Judicial review and intervention. Most Cited Cases

Employer incurred a sufficient injury in fact inflicted by the denial of its petition to obtain H–1B visa status on behalf of an alien job applicant, and therefore had standing to challenge the denial; there was no requirement that employer show that it could not find another employee to fill the position before it could be regarded as having sustained an injury that conferred standing. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[2] Federal Civil Procedure 170A 1772

170A Federal Civil Procedure
170AXI Dismissal
170AXI(B) Involuntary Dismissal
170AXI(B)3 Pleading, Defects In, in General
170Ak1772 k. Insufficiency in general. Most Cited Cases

Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense; to be considered plausible, a claim must be more than merely conceivable; rather, factual allegations of a pleading must be enough to raise a right to relief above the speculative level. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[3] Federal Courts 170B 2074

170B Federal Courts
170BII Jurisdiction, Powers, and Authority in General
170BII(C) Objections, Proceedings, and Determination in General
170Bk2072 Necessity of Objection; Power and Duty of Court
170Bk2074 k. Sua sponte determination. Most Cited Cases
(Formerly 170Bk30)

If precedent exists that serves to divest court of jurisdiction, regardless of whether the parties cite the case in their briefing, then court must sua sponte raise the issue.

[4] Aliens, Immigration, and Citizenship 24

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385

24 Aliens, Immigration, and Citizenship
24V Denial of Admission and Removal
24V(G) Judicial Review or Intervention
24k385 k. Jurisdiction and venue. Most Cited Cases

Provision of Immigration and Nationality Act which insulates from judicial review discretionary decisions by Attorney General is not meant to be a jurisdiction-divesting statute that covers any and all agency conduct containing any component of or related to discretionary decisionmaking; rather, provision targets only those intrinsically specified instances where a decision is sufficiently discretionary so as to warrant immunization from judicial review. Immigration and Nationality Act, § 242(a)(2)(B)(ii), 8 U.S.C.A. § 1252(a)(2)(B)(ii).

[5] Aliens, Immigration, and Citizenship 24 ⇐ 207

24 Aliens, Immigration, and Citizenship
24IV Admission and Visas in General
24IV(F) Visa Proceedings
24k207 k. Judicial review and intervention. Most Cited Cases

Provision of Immigration and Nationality Act which insulates from judicial review discretionary decisions by Attorney General did not divest court of jurisdiction over employer's challenge to denial of its petition to obtain H–1B visa status on behalf of an alien job applicant. Immigration and Nationality Act, §§ 214(a)(1), 242(a)(2)(B)(ii), 8 U.S.C.A. §§ 1184(a)(1), 1252(a)(2)(B)(ii).

[6] Aliens, Immigration, and Citizenship 24 ⇐ 194

24 Aliens, Immigration, and Citizenship
24IV Admission and Visas in General
24IV(D) Non-Immigrant Visas
24k194 k. Temporary workers. Most Cited Cases

United States Citizenship and Immigration Services acted arbitrarily, capriciously, and abused its discretion in denying employer's petition for H–1B visa status on behalf of an alien applicant for market research analyst position on ground that the position was not a "specialty occupation;" position was a distinct occupation with a specialized course of study that included multiple specialized fields, applicant had completed such specialized study in the relevant fields of marketing and finance, and employer sought to employ him in such a position. 5 U.S.C.A. § 702; 8 C.F.R. § 214.2(h)(4); Immigration and Nationality Act, § 214(i)(1)(B), 8 U.S.C.A. § 1184(i)(1)(B).

[7] Administrative Law and Procedure 15A ⇐ 763

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak763 k. Arbitrary, unreasonable or capricious action; illegality. Most Cited Cases

In order for agency action to survive judicial review the agency must have examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made. 5 U.S.C.A. § 702.

***986** Robert Howard Cohen, Kathleen M. Trafford, Porter, Wright, Morris & Arthur LLP, Columbus, OH, for Plaintiff.

Jeffrey S. Robins, U.S. Department of Justice, Washington, DC, for Defendant.

OPINION AND ORDER

GREGORY L. FROST, District Judge.

This matter is before the Court for consideration of the following filings:

(1) Plaintiff's Motion for Summary Judgment (ECF No. 4);

(2) Defendant's Motion to Dismiss, Cross–Motion for Summary Judgment, and

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Opposition to Plaintiff's Motion for Summary Judgment (ECF No. 12);

(3) Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss and Defendant's Cross–Motion for Summary Judgment/Plaintiff's Reply Memorandum in Support of its Motion for Summary Judgment (ECF No. 18); and

(4) Defendant's Reply Memorandum in Support of Defendant's Motion to Dismiss and Cross–Motion for Summary Judgment (ECF No. 19).

For the reasons that follow, this Court **GRANTS** Plaintiff's Motion for Summary Judgment (ECF No. 4) and **DENIES** Defendant's Motion to Dismiss and Cross–Motion for Summary Judgment (ECF No. 12).

I. Background

Plaintiff, Residential Finance Corporation, is in the residential mortgage financing business. On August 9, 2011, the company filed a Form I–129 petition seeking an H–1B Visa for Geza Rakoczi, a twenty-five-year-old who has lived in the United States since the age of four. Plaintiff wants to employ Rakoczi as a market research analyst, and a successful petition would result in Rakoczi obtaining H–1B status under Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act. In other words, Rakoczi would be "an alien ... who is coming temporarily to the United States to perform services ... in a specialty occupation." 8 U.S.C. § 1101(a)(15)(H)(i)(b).

***987** After an unexplained initial delay in processing, Defendant, the United States Citizenship and Immigration Services, requested additional evidence in regard to the petition. Plaintiff responded to the request, and Defendant subsequently denied the petition on November 11, 2011. Plaintiff now seeks judicial review of the denial pursuant to 5 U.S.C. § 702 and has filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (ECF No. 4.) Defendant has filed a combined motion pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 56. (ECF No. 12.) The parties have fully briefed the motions, which are now ripe for disposition.

II. Discussion

A. Jurisdiction & Little Tucker Act

Rule 12(b)(1) provides that an action may be dismissed for lack of subject matter jurisdiction. Under the Federal Rules of Civil Procedure, "[p]laintiffs have the burden of proving jurisdiction in order to survive a Rule 12(b)(1) motion...." *Weaver v. Univ. of Cincinnati,* 758 F.Supp. 446, 448 (S.D.Ohio 1991) (citing *Moir v. Greater Cleveland Reg'l Transit Auth.,* 895 F.2d 266, 269 (6th Cir.1990)). *See also Rapier v. Union City Non–Ferrous, Inc.,* 197 F.Supp.2d 1008, 1012 (S.D.Ohio 2002) (citing *McNutt v. General Motors Acceptance Corp. of Indiana, Inc.,* 298 U.S. 178, 189, 56 S.Ct. 780, 80 L.Ed. 1135 (1936); *Rogers v. Stratton Indus., Inc.,* 798 F.2d 913, 915 (6th Cir.1986)) ("The plaintiff bears the burden of establishing, by a preponderance of the evidence, the existence of federal subject matter jurisdiction").

Motions under Rule 12(b)(1) generally come in two varieties, either facial or factual attacks on the complaint. *United States v. Ritchie,* 15 F.3d 592, 598 (6th Cir.1994). A facial attack on the subject matter jurisdiction alleged by a complaint merely questions the sufficiency of the pleading. *Id.* In reviewing such a facial attack, a trial court takes the allegations in the complaint as true, a similar safeguard employed under Rule 12(b)(6) motions to dismiss. *Id.* On the other hand, when a court reviews a complaint under a factual attack, no presumptive truthfulness applies to the factual allegations. *Ohio Nat'l Life Ins. Co. v. United States,* 922 F.2d 320, 325 (6th Cir.1990). *See also Nat'l Ass'n of Minority Contractors v. Martinez,* 248 F.Supp.2d 679, 681 (S.D.Ohio 2002). As a result, this Court may weigh the evidence and resolve any factual disputes when adjudicating such

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a jurisdictional challenge. *United States v. Ritchie,* 15 F.3d 592, 598 (6th Cir.1994) (citing *Moir,* 895 F.2d at 269).

Invoking Rule 12(b)(1), Defendant argues that the Court lacks subject matter jurisdiction on the premise that Plaintiff lacks standing to challenge the denial of the H–1B petition on Rakoczi's behalf. This proposition is contrary to law. *Pai v. U.S. Citizenship & Immigration Servs.,* 810 F.Supp.2d 102, 111–12 (D.D.C.2011) ("stating that numerous courts ... agree (albeit for a variety of reasons) that the petitioner—and not the beneficiary—of a visa application is the proper party with standing to challenge the agency's action"); *Morris v. Gonzales,* No. 06–4383, 2007 WL 2740438, at *6 (E.D.Pa. Sept. 19, 2007) (explaining that the petitioner is the only party with standing to seek review of the revocation of a visa); *Blacher v. Ridge,* 436 F.Supp.2d 602, 606 n. 3 (S.D.N.Y.2006) (holding that "the petitioner ... is the only party with standing to seek review of the petition's denial"). *Cf.* 8 C.F.R. § 103.3(a)(1)(iii)(B) (providing that in an administrative appeal, the affected party "does not include the beneficiary of a visa petition").

[1] Plaintiff has incurred a sufficient injury in fact inflicted by the denial of the petition. The denial of the H–1 B petition ***988** deprived Plaintiff of the ability to employ and reap the presumed benefits of employing Rakoczi. *See Wong v. Napolitano,* 654 F.Supp.2d 1184, 1189 (D. Oregon 2009) (collecting cases supporting the proposition that "[b]ecause the denial of [a] visa application would deprive the employer of [a] prospective employee, each employer ha[s] a concrete and particularized injury, namely the inability to hire a specific employee it would have hired absent the agency's action."). Contrary to Defendant's argument, there is simply no requirement that Plaintiff has to show that it cannot find another employee to fill the market research analyst position before it can be regarded as having sustained an injury that confers standing.

Defendant also argues that the Court should dismiss the complaint on the ground that Plaintiff fails to state a claim under the Little Tucker Act, 28 U.S.C. § 1346(a)(2). That statute provides:

> The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:
>
> ...
>
> **(2)** Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41....

28 U.S.C. § 1346(a)(2). After citing the statute, Defendant states that because Plaintiff neither seeks money damages nor asserts a source of substantive law mandating monetary compensation, Plaintiff has failed to state a claim upon which this Court can grant relief. (ECF No. 12, at 12.)

[2] This odd portion of the briefing invokes Rule 12(b)(6). In assessing whether Plaintiff has set forth a claim upon which this Court can grant relief, the Court must construe the complaint in favor of Plaintiff, accept the factual allegations contained in that pleading as true, and determine whether the factual allegations presents plausible claims. *See Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The Supreme Court has explained, however, that "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal,* 556 U.S.

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662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). Thus, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Consequently, "[d]etermining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 1950.

To be considered plausible, a claim must be more than merely conceivable. *Bell Atlantic Corp.*, 550 U.S. at 556, 127 S.Ct. 1955; *Ass'n of Cleveland Fire Fighters v. City of Cleveland, Ohio,* 502 F.3d 545, 548 (6th Cir.2007). What this means is that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 129 S.Ct. at 1949. The factual allegations of a pleading "must be enough to raise a right to relief above the speculative level...." *Twombly,* 550 U.S. at 555, 127 S.Ct. 1955. *See also* ***989** *Sensations, Inc. v. City of Grand Rapids,* 526 F.3d 291, 295 (6th Cir.2008).

Defendant has failed to direct this Court to any case in which any court has ever applied 28 U.S.C. § 1346(a)(2) as requested in the context of visa denial case. Plaintiff in turn argues that "[b]ecause the Court clearly does have jurisdiction over this action pursuant to 28 U.S.C. § 1331, the fact that it may not also have jurisdiction over this action under 28 U.S.C. § 1346(a)(2) is of no consequence." (ECF No. 18, at 1–2.) Agreeing with Plaintiff (if perhaps not Plaintiff's use of "clearly"), this Court cannot say that Plaintiff has failed to state a plausible claim.

[3] Given the foregoing, the Court **DENIES** Defendant's Rule 12 motions. (ECF No. 12.) This is, however, not the end of the jurisdictional inquiry. If precedent exists that serves to divest this Court of jurisdiction, regardless of whether the parties cite the case in their briefing, then this Court must *sua sponte* raise the issue. *See* Fed.R.Civ.P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

In *CDI Information Services, Inc. v. Reno,* 278 F.3d 616 (6th Cir.2002), the Sixth Circuit addressed the effect of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub.L. No. 104–208, 110 Stat. 3009, on judicial review of the denial of a petition for extension of an alien's H–1B visa. *Sua sponte* raising the issue of jurisdiction on appeal, the court of appeals held that federal courts lacked subject matter jurisdiction to review that decision based on 8 U.S.C. § 1252(a)(2)(B)(ii). The current version of that statute, which substantively tracks the version upon which the Sixth Circuit relied but also includes the Secretary of Homeland Security, provides:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—
>
> ...
>
> **(ii)** any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

8 U.S.C. § 1252(a)(2)(B)(ii). The court of appeals reasoned:

> The subchapter referred to is subchapter II of Chapter 12 of Title 8, which covers sections 1151 through 1378. Section 1184, which falls within this subchapter, governs the admission of non-immigrants, including H1–B non-immigrants such as Mr. Vaideeswaran, to the United States. It provides that "[t]he admission to the United

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> States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe." 8 U.S.C. § 1184(a)(1) (1999). The relevant regulation governing Mr. Vaideeswaran's petition for a visa extension, 8 C.F.R. § 214.1(c)(5), clearly confers discretion on the Service, stating that "[w]here an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service." 8 C.F.R. § 214.1(c)(5) (2001). Accordingly, we find that we lack jurisdiction to hear Mr. Vaideeswaran's complaint.

CDI Information Services, Inc., 278 F.3d at 619. Notably, the Sixth Circuit held "that section 1252(a)(2)(B)(ii) is not limited ***990** to discretionary decisions made within the context of removal proceedings." *Id.* at 620. This reading of § 1252(a)(2)(B)(ii) —broader than many courts in other Circuits—is binding precedent. The relevance of this precedent is that, if applicable here, its application would mean that § 1252(a)(2)(B)(ii) divests this Court of subject matter jurisdiction over the denial of the Rakoczi H–1B petition.

CDI Information Services, Inc. does not preclude jurisdiction here. That case involved 8 U.S.C. § 1184(a)(1) and 8 C.F.R. § 214.1(c)(5), while consideration of the petition at issue here involves 8 U.S.C. § 1184 and 8 C.F.R. § 214.2(h). This is a key point because the language of the regulations involved proves distinguishable so as to preclude application of *CDI Information Services, Inc.*

8 C.F.R. § 214.2(h)(1)(i) provides:

> Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified as follows: ... under section 101(a)(15)(H)(i)(b) of the Act as an alien who is coming to perform services in a specialty occupation....

8 C.F.R. § 214.2(h)(1)(i). Another section of the regulation provides

> [4] An H–1B classification may be granted to an alien who:
>
> (1) Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation[.]

8 C.F.R. § 214.2(h)(4)(i)(A)(1). Thus, the regulations involved here do not echo *CDI Information Services, Inc.'s* regulation, which contained an express declaration of discretion. *See* 8 C.F.R. § 214.1(c)(5) (providing that the "requested extension ... may be granted *at the discretion of* the Service" (emphasis added)). If "may" is interchangeable with "may at the discretion of," then Congress has set forth a statutory scheme in which it sometimes employs surplusage without any apparent basis for doing so. Crediting that Congress used the extra words to mean something, this Court concludes that § 1252(a)(2)(B)(ii) is not meant to be a jurisdiction-divesting statute that covers any and all agency conduct containing any component of or related to discretionary decisionmaking. Rather, § 1252(a)(2)(B)(ii) —even as construed in *CDI Information Services, Inc.*—appears to target only those intrinsically specified instances where a decision is sufficiently discretionary so as to warrant immunization from judicial review.

Consequently, what removes the instant case from the scope of *CDI Information Services, Inc.* is that here there is no explicit discretion component,

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which is the Sixth Circuit's requisite characteristic for invocation of § 1252(a)(2)(B)(ii). Tracking this approach, another judicial officer has explained H–1B proceedings as follows:

> [T]his Court looks to the relevant statutes in the present case to determine whether the denial of an H–1B nonimmigrant visa is committed to agency discretion and therefore unreviewable by this Court—8 U.S.C. § 1101(a)(15)(H)(i)(b) and § 1184(i)(1), (2). 8 U.S.C. § 1101(a)(15)(H)(i)(b) provides that an alien coming temporarily to the United States to perform services ***991** in a specialty occupation, as defined by section 1184(i)(1), is a nonimmigrant alien. As set forth above, § 1184(i)(1), (2) and 8 C.F.R. § 214.2 establish explicit criteria, which, if fulfilled, qualify an occupation as a "specialty occupation" and an alien beneficiary for nonimmigrant H–1B status. When evaluating a petition for an H–1B nonimmigrant visa, the INS is bound by 8 U.S.C. § 1184(a)(1) to follow the statutory regulations established in 8 C.F.R. § 214.2, as "[t]he admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe." 8 U.S.C. § 1184(a)(1). The Attorney General's treatment of alien petitions for nonimmigrant H–1B status is therefore governed by regulations and can be distinguished from her treatment of other matters under 8 U.S.C. Chapter 12 committed solely to her discretion. *See, e.g.,* 8 U.S.C. § 1182(h) ("The Attorney General may, in his discretion, waive the application" of the enumerated subparagraphs); 8 U.S.C. §§ 1154(a)(1)(H), 1229b(b)(2)(E) ("The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General"); 8 U.S.C. § 1227(a)(1)(E)(iii) ("The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i)"); 8 U.S.C. § 1225(b)(1)(A)(iii)(I) ("The Attorney General *may* apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time") (emphasis added).
>
> Accordingly, this Court concludes that a determination regarding a petition for a nonimmigrant H–1B visa is not "committed to agency discretion by law," and that the INA provides "judicially manageable standards," which have been repeatedly used by courts to evaluate agency action for abuse of discretion in granting or denying petitions for a nonimmigrant H–1B visa. *See, e.g., Dominance Industries, Inc., et al. v. INS, et al.,* 1998 WL 874904; *All Aboard Worldwide Couriers, Inc. v. Attorney General,* 8 F.Supp.2d 379 (S.D.N.Y.1998); *Mercy Catholic Medical Center v. Reno,* 1994 WL 698293 (E.D.Pa.1994); *Young China Daily v. Chappell,* 742 F.Supp. 552 (N.D.Cal.1989); *Central Indonesian Trading Company v. INS,* 1990 WL 161020 (S.D.N.Y.); *Bodeux v. INS,* 668 F.Supp. 1452 (D.Kan.1987); *Occidental Engineering Company v. INS,* 753 F.2d 766 (9th Cir.1985).

Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1160–61 (D.Minn.1999). The fact that this construction was offered in the context of discussing the potentially jurisdiction-divesting 5 U.S.C. § 701 does not render useless here the main point of the quoted passage: that a determination regarding a petition for a nonimmigrant H–1B visa is not committed to agency discretion. Thus, although the Sixth Circuit has disagreed with *Shanti* 's more narrow construction of the scope of § 1252(a)(2)(B)(ii), the court of appeals did not reject expressly its conclusion regarding whether the denial of a H–1B petition such as found here is a discretionary decision. *CDI Information Services, Inc.,* 278 F.3d at 619–20.

The approach discussed above may or may not be correct. *See Evangelical Lutheran Church in*

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Am. v. Immigration & Naturalization Servs., 288 F.Supp.2d 32 (D.D.C.2003) (summarizing *CDI Information Services, Inc.* and contrary cases and concluding that "there is ample case law to support either interpretation of § 1252"). The contours of ***992***CDI Information Services, Inc.* are unclear. The Sixth Circuit itself has subsequently described *CDI Information Services, Inc.* somewhat generally, although the rationale of *CDI Information Services, Inc.* suggests that it be given broad effect. *See Abu–Khaliel v. Gonzales*, 436 F.3d 627, 632 (6th Cir.2006) (" *CDI Information Services* dealt with an application for a visa extension."). Perhaps more important is that the court of appeals may be linking the statute *with* the regulation arising from it, rather than solely crediting the statute involved as singularly dispositive of the discretionary decision-jurisdiction issue. *Id.* ("Section 1184(a)(1) *and* the regulation it enables, 8 C.F.R. § 214.1(c)(5) , give the Attorney General discretion over the granting of visa applications." (emphasis added)). Of course, the court of appeals may have simply meant that the statute confers discretion *and* the regulations present discretionary choices informing the exercise of the statutory discretion.

Not all courts have adopted such a view that a regulation can inform the issue of whether a discretionary decision is involved. *See, e.g., Pedrozo v. Clinton*, 610 F.Supp.2d 730, 737 (S.D.Texas 2009) ("[B]ecause of the jurisdiction stripping statute's pellucid phrasing, it is clear the language of other federal regulations further defining the petition process have no bearing in determining whether USCIS's duty to act is discretionary or non-discretionary."). The role of a regulation in the jurisdiction equation is therefore complicated, as one judge has explained:

> Even though the jurisdiction-stripping provisions of section 1252 apply outside the removal context, *see Zhu v. Gonzales*, 411 F.3d 292, 294 (D.C.Cir.2005); *El–Khader* [*v. Monica*], 366 F.3d [562] at 567 [(7th Cir.2004)]; *CDI Info. Servs., Inc. v. Reno*, 278 F.3d 616, 620 (6th Cir.2002); *Van Dinh v. Reno*, 197 F.3d 427, 432 (10th Cir.1999), the question remains whether the statutory scheme places the authority to grant H–1B visa petitions sufficiently within CIS's discretion as to engage the gears of the jurisdictional bar.
>
> The answer to this question is freighted with uncertainty, in part because the courts of appeals have disagreed about how to approach the matter of when a statute can be said to "specify" discretionary authority. *See, e.g., Zhu*, 411 F.3d at 295 (describing various approaches). To illustrate, the Sixth Circuit determined that it lacked jurisdiction to review the denial of an H–1B visa because the regulations, rather than the pertinent statute itself, commit the matter to agency discretion. *See CDI Info. Servs.*, 278 F.3d at 619. But other circuits have rejected that interpretive model. *See, e.g., Zafar v. U.S. Atty. Gen.*, 461 F.3d 1357, 1361 (11th Cir.2006); *Zhao v. Gonzales*, 404 F.3d 295, 303 & n. 6 (5th Cir.2005). We, too, recently have rejected it, insisting that the relevant commitment to agency discretion must be found in the statute itself. *See Alsamhouri v. Gonzales*, 484 F.3d 117, 122 (1st Cir.2007). There is, moreover, a further problem. The text of the statute upon which the government relies here, 8 U.S.C. § 1184(a)(1), is considerably less definitive in its commitment of authority to agency discretion than other statutes that have been found to animate the jurisdictional bar.
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> *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 143 (1st Cir.2007). Thus, even if *CDI Information Services, Inc.* is perhaps less clear than it might have been on whether the general language of the statute itself answers the jurisdictional bar query as opposed to a related regulation, some courts have treated the holding of that case as regulation-dependent. It is unclear whether the Sixth Circuit construed the statute involved to present a "specified" discretionary decision without reliance ***993** on the more specific regulation language

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expressly recognizing the requisite discretion.

What is clear is that courts within the Circuit have not been uniform in their treatment of *CDI Information Services, Inc.* The court of appeals has applied *CDI Information Services, Inc.* outside the specific context of that case, albeit without setting forth any detailed statutory analysis. *See Thomas v. Jenifer,* 33 Fed.Appx. 212, 212 (6th Cir.2002) (holding that § 1252(a)(2)(B)(ii) applied to a case involving "EB–2 visas" because the issuance of such a visa "is clearly a discretionary decision of the Attorney General, as delegated to the INS"). At least one district court judge in this Circuit, recognizing but seeking to distinguish *CDI Information Services, Inc.,* has read that decision as presenting a critical distinction between *substantive* discretionary decisions (no jurisdiction exists) and *procedural* decisions (jurisdiction exists). *See Detroit Free Press v. Ashcroft,* 195 F.Supp.2d 948, 955–56 (E.D.Mich.2002). *But see Abu–Khaliel v. Gonzales,* 436 F.3d at 634 ("If Congress grants courts the ability to review the merits of a proceeding, it would seem very odd indeed for a court to lack the ability to review a procedural decision that is determinative of the merits of a case, particularly when the court has jurisdiction to review the merits of that case absent a conclusive procedural ruling."). Another district court judge has reached the merits of an H–1B petition case involving 8 C.F.R. § 214.2(h)(4) without even discussing either *CDI Information Services, Inc.* or § 1252(a)(2)(B)(ii). *See EG Enters., Inc. v. Dep't of Homeland Sec.,* 467 F.Supp.2d 728 (E.D.Mich.2006).

Against such a backdrop, this Court recognizes that it may be incorrect in reading *CDI Information Services, Inc.* to apply only in what amounts to a magic words context. *See Global Export/Import Link, Inc. v. U.S. Bureau of Citizenship & Immigration Servs.,* 423 F.Supp.2d 703, 707 (E.D.Mich.2006) (rejecting magic words approach and determining whether § 1252(a)(2)(B)(ii) applies by focusing on whether each statutory provision involved leaves the decision to the Attorney General). The cleaner analysis of a district court judge from outside this Circuit may thus prove correct. In the previously mentioned *Blacher v. Ridge,* a district judge addressed the denial of an H–1B visa petition. 436 F.Supp.2d at 605. The judicial officer reasoned that 8 U.S.C. § 1184(a)(1) "clearly grants discretion to the Attorney General in these cases to determine whether the conditions for the visa have been met." *Id.* at 606. Invoking § 1252(a)(2)(B)(ii) and citing *CDI Information Services, Inc.* for support, the district judge held:

> Although denials of H1–B visas are not enumerated specifically in the IIRIRA legislation, the plain language of the legislation necessarily precludes judicial review of the discretionary denial of the H1–B visa petition. *See CDI Info. Servs., Inc. v. Reno,* 278 F.3d 616, 620 (6th Cir.2002). Therefore, INA § 242(a)(2)(B)(ii), codified as 8 U.S.C. § 1252(a)(2)(B)(ii), deprives this Court of jurisdiction to review the denial of the H1–B visa petition.

Id. at 607. This conclusion is not without persuasiveness.

[5] Given the arguments on both sides of the issue and the debatable line between what is a discretionary decision and what is not, however, this Court declines to read *CDI Information Services, Inc.* as extending beyond the application expressly set forth in that decision and in *Thomas v. Jenifer.* Reading each regulation's use of "may" involved here to equal the sort of discretionary decision the court of appeals found to exist in "may be granted *at the discretion of* the Service" would arguably ***994** effectuate an erroneous broad divestiture of jurisdiction not intended by the higher court's understanding of § 1252(a)(2)(B)(ii). And treating 8 U.S.C. § 1184(a)(1) as providing a blanket discretionary umbrella for all regulation-related decisions that fall under that statute might similarly work an unintended result. Rather than overreach and erroneously deny a party

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consideration of the merits, this Court concludes that it has subject matter jurisdiction and will proceed to address the merits of this litigation.

B. Merits

Federal Rule of Civil Procedure 56 provides that summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). The Court may therefore grant a motion for summary judgment if the nonmoving party who has the burden of proof at trial fails to make a showing sufficient to establish the existence of an element that is essential to that party's case. *See Muncie Power Prods., Inc. v. United Tech. Auto., Inc.*, 328 F.3d 870, 873 (6th Cir.2003) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

In viewing the evidence, the Court must draw all reasonable inferences in favor of the nonmoving party, which must set forth specific facts showing that there is a genuine issue of material fact for trial. *Id.* (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)); *Hamad v. Woodcrest Condo. Ass'n*, 328 F.3d 224, 234 (6th Cir.2003). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Muncie*, 328 F.3d at 873 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). Consequently, the central issue is " 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.' " *Hamad*, 328 F.3d at 234–35 (quoting *Anderson*, 477 U.S. at 251–52, 106 S.Ct. 2505).

Plaintiff is entitled to the relief sought if the denial of the petition was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). Under this standard and in light of the relevant statutory and regulation provisions, Plaintiff must prevail.

[6] The issue before this Court is whether Defendant was incorrect in concluding that there was not a specialty occupation involved here. A "specialty occupation" is "an occupation that requires ... attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." 8 U.S.C. § 1184(i)(1)(B). The related regulation definition provides:

> Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

8 C.F.R. § 214.2(h)(4)(ii). The regulation also provides that "[t]o qualify as a specialty occupation, the position must meet one of several criteria," one of which includes that "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position." 8 C.F.R. § 214.2(h)(4)(iii)(A). ***995** Rokoczi must have completed the degree to satisfy 8 U.S.C. § 1184(i)(2)(B).

The November 11, 2011 decision denying the petition targeted the foregoing requirement that the degree be in a specific specialty, stating: "There is one reason why the record is insufficient to classify the proffered position as a market research analyst position. The only reason concerns whether or not a baccalaureate or higher degree in a specific academic discipline is required for the position of Market Research Analyst." (ECF No. 17, at 7.) The decision went on to explain that although the

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United States Department of Labor's 2010–11 edition of the *Occupational Outlook Handbook ("OOH")*) recognized a baccalaureate degree as the minimum educational requirement for many market and survey research jobs, the *OOH* does not indicate that these degrees need be in a specific specialty directly related to market research. The decision offers the following support for this conclusion:

> That the OOH does not indicate that market research analyst positions normally require at least a bachelor's degree in a specific specialty is evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "Market and Survey Researcher":
>
> > A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree may be required, especially for technical positions, and increases opportunities for advancement to more responsible positions.

(ECF No. 17, at 7.) The decision cites a similar excerpt of the *OOH* as additional support. The absence of a specific specialty requirement led to the conclusion that the occupational category was not a specialty occupation as defined in the relevant statutory and regulation provisions. The decision includes the caveat that its conclusion does not necessarily apply to all market research analyst positions; rather, the decision explains, a specific market research analyst position may qualify as a specialty occupation if documented evidence establishes that the position "is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or its equivalent, in a specific specialty closely related to the position's duties." (ECF No. 17, at 8.) Defendant concluded that Plaintiff had failed to meet this burden, discussing how Plaintiff failed to meet the four regulation criteria:

> (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
>
> (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
>
> (3) The employer normally requires a degree or its equivalent for the position; or
>
> (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.
>
> 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

The relevant facts here are presented by the administrative record upon which Defendant relied in reaching this decision to deny the petition. This record establishes that Rokoczi is a recent graduate of Franklin University who obtained a bachelor of science degree in marketing and finance. His course work included financial accounting, spreadsheets, databases, statistical concepts, managerial accounting, marketing behavior, marketing research, ***996** and money markets. He hoped to apply this knowledge as a market research analyst, *not as a manager*. And the record indicates that a minimum requirement for entry into the position of a market research analyst is the specialized course of study in which Rokoczi engaged. Additionally, the record here includes specific job duties, not generic duties as Defendant found. Perhaps most bewildering is that Defendant rejected the evidence that Rokoczi would actually be performing these job duties if hired, despite no evidence to the contrary and no other apparent reason for failing to credit the evidence on this record.

Defendant continues to reject this record in favor of supporting a flawed denial. What Defendant overlooks is that the illogical leaps about

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which Plaintiff complains in its thorough briefing cannot be separated from the process in which Defendant engaged in its decisionmaking. Stated simply, Defendant did a poor job of keeping the record straight and its focus on the actual inquiry involved. Defendant expressly admits in its briefing to the following inexplicable errors:

> RFC correctly notes that USCIS's references to the OOH in subsection one of the decision are misplaced. RFC's Motion for Summary Judgment ("RFC MSJ") at 9–10, citing CAR at 7. Those OOH references discuss: a preference for degrees in business administration, the filling of positions via the promotion of experienced staff, and the importance of in-house training programs. (CAR at 7). However, those references are from the OOH section describing Advertising, Marketing, Promotions, Public Relations and Sales Managers. (CAR at 7).
>
> USCIS incorrectly referred to the OOH section describing Advertising, Marketing, Promotions, Public Relation and Sales Managers; however, the denial previously addressed the OOH's lack of a degree requirement in a specific specialty for "Market and Survey Researchers."
>
> While USCIS's RFE specifically requested a breakdown of the percentage of time that the beneficiary would spend on various duties, Petitioner provided no such breakdown. Accordingly, USCIS's statement that Petitioner submitted such a breakdown is not accurate.
>
> USCIS's decision appears to incorrectly identify the proffered position as a Marketing Manager rather than a Marketing Analyst.

(ECF No. 12, at 8–9 nn. 2–5.) These errors are not the essentially inconsequential lapses that Defendant suggests. Instead, they constitute a litany of incompetence that presents fundamental misreading of the record, relevant sources, and the point of the entire petition. If Defendant is going to deny a petition that will send Rokoczi to another country after twenty-one years of living in the United States, it should afford Plaintiff and Rokoczi a bare minimum level of professionalism, diligence, and reasoning.

Defendant argues that Plaintiff is attempting to read out of the statutory and regulation requirements the "specific specialty" component. But Defendant's approach is too narrow. The record here indicates that a market and survey researcher is a distinct occupation with a specialized course of study that includes multiple specialized fields (ECF No. 17, at 37–38), that Rokoczi had completed such specialized study in the relevant fields of marketing and finance, and that Plaintiff sought to employ him in such a position. Plaintiff provided evidence that it required a baccalaureate degree for this position, and there is no apparent requirement that the specialized study needed be in a single academic discipline as opposed to a specialized course of study in related business specialties. Defendant's implicit premise ***997** that the title of a field of study controls ignores the realities of the statutory language involved and the obvious intent behind them. The knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge. *See Tapis Int'l v. I.N.S.*, 94 F.Supp.2d 172, 175–76 (D.Mass.2000) (rejecting agency interpretation because it would preclude any position from satisfying the "specialty occupation" requirements where a specific degree is not available in that field).

[7] A petition should be decided on the actual record, utilizing the correct portions of relevant resources, and for the actual position to be filled. Defendant has failed to meet this fundamental threshold for rational decisionmaking and has instead engaged in conduct that cannot be separated from the taint of the foregoing errors. Under APA review, it is well settled that

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> [i]n order for agency action to survive judicial review the agency must have "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' " [*Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*] *Id.* [463 U.S. 29] at 43, 103 S.Ct. [2856] at 2866 [77 L.Ed.2d 443 (1983)] (quoting *Burlington Truck Lines, Inc. v. United States,* 371 U.S. 156, 168, 83 S.Ct. 239, 245–46, 9 L.Ed.2d 207 (1962)). The agency's explanation is subject to review under the standard set out in *Overton Park,* which requires the court to "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Id.* (quoting [*Citizens to Preserve*] *Overton Park* [*v. Volpe*], 401 U.S. [402] at 416, 91 S.Ct. [814] at 823–24 [28 L.Ed.2d 136 (1971)]).

Simms v. Nat'l Highway Traffic Safety Admin., 45 F.3d 999, 1004 (6th Cir.1995). Defendant failed to examine all of the correct relevant data and to articulate an untainted, satisfactory explanation for the denial that rationally connected the facts to the decision. The denial of the petition here was thus arbitrary, capricious, and an abuse of discretion. This Court therefore agrees with Plaintiff that Defendant "failed to provide a coherent, rational explanation for its decision and its decision runs counter to the evidence before it." (ECF No. 18, at 3.)

III. Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Summary Judgment (ECF No. 4) and **DENIES** Defendant's Motion to Dismiss and Cross–Motion for Summary Judgment (ECF No. 12). Defendant shall grant Plaintiff's petition and change Rakoczi's status to H–1B nonimmigrant. The Clerk shall enter judgment accordingly and terminate this action on the docket records of the United States District Court for the Southern District of Ohio, Eastern Division.

IT IS SO ORDERED.

S.D.Ohio,2012.
Residential Finance Corp. v. U.S. Citizenship and Immigration Services
839 F.Supp.2d 985

END OF DOCUMENT

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Exhibit C – Department of Labor Documents

U.S. Bureau of Labor Statistics

Computer Programmers

Summary



Programmers spend most of their time writing and testing computer code.

Quick Facts: Computer Programmers	
2017 Median Pay	$82,240 per year $39.54 per hour
Typical Entry-Level Education	Bachelor's degree
Work Experience in a Related Occupation	None
On-the-job Training	None
Number of Jobs, 2016	294,900
Job Outlook, 2016-26	-7% (Decline)
Employment Change, 2016-26	-21,300

What Computer Programmers Do

Computer programmers write and test code that allows computer applications and software programs to function properly. They turn the program designs created by software developers and engineers into instructions that a computer can follow.

Work Environment

Programmers usually work in offices, most commonly in the computer systems design and related services industry.

How to Become a Computer Programmer

Most computer programmers have a bachelor's degree; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

Pay

The median annual wage for computer programmers was $82,240 in May 2017.

Job Outlook

Employment of computer programmers is projected to decline 7 percent from 2016 to 2026. Computer programming can be done from anywhere in the world, so companies sometimes hire programmers in countries where wages are lower.

State & Area Data

Explore resources for employment and wages by state and area for computer programmers.

Similar Occupations

Compare the job duties, education, job growth, and pay of computer programmers with similar occupations.

More Information, Including Links to O*NET

Learn more about computer programmers by visiting additional resources, including O*NET, a source on key characteristics of workers and occupations.

What Computer Programmers Do



Computer programmers write programs in a variety of computer languages, such as C++ and Java.

Computer programmers write and test code that allows computer applications and software programs to function properly. They turn the program designs created by software developers and engineers into instructions that a computer can follow. In addition, programmers test newly created applications and programs to ensure that they produce the expected results. If they do not work correctly, computer programmers check the code for mistakes and fix them.

Duties

Computer programmers typically do the following:

- Write programs in a variety of computer languages, such as C++ and Java
- Update and expand existing programs
- Test programs for errors and fix the faulty lines of computer code
- Create and test code in an integrated development environment (IDE)
- Use code libraries, which are collections of independent lines of code, to simplify the writing

Programmers work closely with software developers, and in some businesses their duties overlap. When such overlap occurs, programmers can do work that is typical of developers, such as designing programs. Program design entails planning the software initially, creating models and flowcharts detailing how the code is to be written, writing and debugging code, and designing an application or systems interface.

A program's purpose determines the complexity of its computer code. For example, a weather application for a mobile device will require less programming than a social-networking application. Simpler programs can be written in less time. Complex programs, such as computer operating systems, can take a year or more to complete.

Software-as-a-service (SaaS), which consists of applications provided through the Internet, is a growing field. Although programmers typically need to rewrite their programs to work on different system platforms, such as Windows or OS X, applications created with SaaS work on all platforms. Accordingly, programmers writing SaaS applications may not have to rewrite as much code as other programmers do and can instead spend more time writing new programs.

Work Environment



Most programmers work independently in offices.

Computer programmers held about 294,900 jobs in 2016. The largest employers of computer programmers were as follows:

Computer systems design and related services	38%
Finance and insurance	7
Software publishers	7
Manufacturing	5
Self-employed workers	5

Programmers normally work alone, but sometimes work with other computer specialists on large projects. Because writing code can be done anywhere, many programmers work from their homes.

Work Schedules

Most computer programmers work full time.

How to Become a Computer Programmer



Most programmers have a degree in computer science or a related field.

Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

Education

Most computer programmers have a bachelor's degree; however, some employers hire workers who have other degrees or experience in specific programming languages. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.

Most programmers learn a few computer languages while in school. However, a computer science degree gives students the skills needed to learn new computer languages easily. Students get hands-on experience writing code, testing programs, fixing errors, and doing many other tasks that they will perform on the job.

To keep up with changing technology, computer programmers may take continuing education classes and attend professional development seminars to learn new programming languages or about upgrades to programming languages they already know.

Licenses, Certifications, and Registrations

Programmers can become certified in specific programming languages or for vendor-specific programming products. Some companies require their computer programmers to be certified in the products they use.

Advancement

Programmers who have general business experience may become computer systems analysts. With experience, some programmers may become software developers. They may also be promoted to managerial positions. For more information, see the profiles on computer systems analysts, software developers, and computer and information systems managers.

Important Qualities

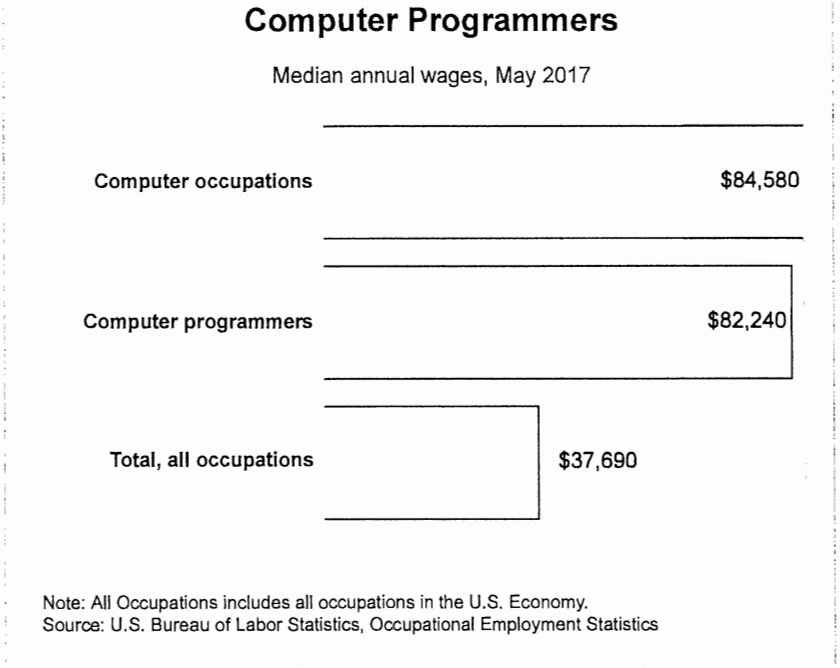
Analytical skills. Computer programmers must understand complex instructions in order to create computer code.

Concentration. Programmers must focus their attention on their work as they write code or check existing code for errors.

Detail oriented. Computer programmers must closely examine the code they write because a small mistake can affect the entire computer program.

Troubleshooting skills. An important part of a programmer's job is to check the code for errors and fix any they find.

Pay



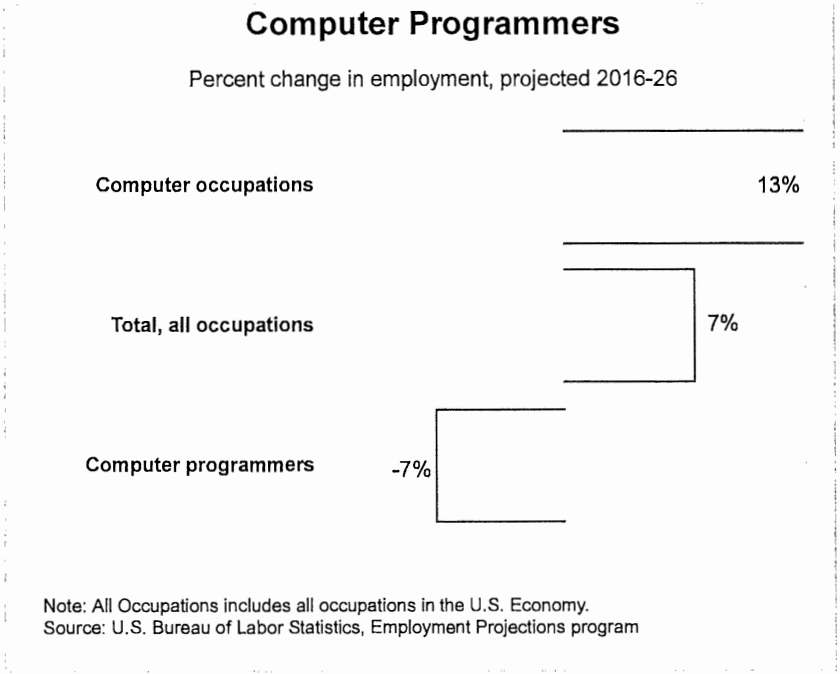
The median annual wage for computer programmers was $82,240 in May 2017. The median wage is the wage at which half the workers in an occupation earned more than that amount and half earned less. The lowest 10 percent earned less than $47,090, and the highest 10 percent earned more than $132,530.

In May 2017, the median annual wages for computer programmers in the top industries in which they worked were as follows:

Software publishers	$97,360
Finance and insurance	88,300
Manufacturing	81,750
Computer systems design and related services	81,240

Most computer programmers work full time.

Job Outlook



Employment of computer programmers is projected to decline 7 percent from 2016 to 2026. Computer programming can be done from anywhere in the world, so companies sometimes hire programmers in countries where wages are lower. This ongoing trend is projected to limit employment growth for computer programmers in the United States. However, the high costs associated with managing projects given to overseas programmers sometimes offsets the savings from the lower wages, causing some companies to bring back or keep programming jobs in the United States.

Job Prospects

Job prospects will be best for programmers who have a bachelor's degree or higher and knowledge of a variety of programming languages. Keeping up to date with the newest programming tools will also improve job prospects.

Employment projections data for computer programmers, 2016-26

Occupational Title	SOC Code	Employment, 2016	Projected Employment, 2026	Change, 2016-26		Employment by Industry
				Percent	Numeric	
Computer programmers	15-1131	294,900	273,600	-7	-21,300	xlsx
SOURCE: U.S. Bureau of Labor Statistics, Employment Projections program						

State & Area Data

Occupational Employment Statistics (OES)

The Occupational Employment Statistics (OES) program produces employment and wage estimates annually for over 800 occupations. These estimates are available for the nation as a whole, for individual states, and for metropolitan and

nonmetropolitan areas. The link(s) below go to OES data maps for employment and wages by state and area.

- Computer programmers

Projections Central

Occupational employment projections are developed for all states by Labor Market Information (LMI) or individual state Employment Projections offices. All state projections data are available at www.projectionscentral.com . Information on this site allows projected employment growth for an occupation to be compared among states or to be compared within one state. In addition, states may produce projections for areas; there are links to each state's websites where these data may be retrieved.

CareerOneStop

CareerOneStop includes hundreds of occupational profiles with data available by state and metro area. There are links in the left-hand side menu to compare occupational employment by state and occupational wages by local area or metro area. There is also a salary info tool to search for wages by zip code.

Similar Occupations

This table shows a list of occupations with job duties that are similar to those of computer programmers.

	OCCUPATION	JOB DUTIES	ENTRY-LEVEL EDUCATION	2017 MEDIAN PAY
	**Computer and Information Research Scientists**	Computer and information research scientists invent and design new approaches to computing technology and find innovative uses for existing technology. They study and solve complex problems in computing for business, medicine, science, and other fields.	Master's degree	$114,520
	**Computer and Information Systems Managers**	Computer and information systems managers, often called information technology (IT) managers or IT project managers, plan, coordinate, and direct computer-related activities in an organization. They help determine the information technology goals of an organization and are responsible for implementing computer systems to meet those goals.	Bachelor's degree	$139,220
	**Computer Hardware Engineers**	Computer hardware engineers research, design, develop, and test computer systems and components such as processors, circuit boards, memory devices, networks, and routers.	Bachelor's degree	$115,120

	OCCUPATION	JOB DUTIES	ENTRY-LEVEL EDUCATION	2017 MEDIAN PAY
	**Computer Network Architects**	Computer network architects design and build data communication networks, including local area networks (LANs), wide area networks (WANs), and Intranets. These networks range from small connections between two offices to next-generation networking capabilities such as a cloud infrastructure that serves multiple customers.	Bachelor's degree	$104,650
	**Computer Support Specialists**	Computer support specialists provide help and advice to computer users and organizations. These specialists either support computer networks or they provide technical assistance directly to computer users.	See How to Become One	$52,810
	**Computer Systems Analysts**	Computer systems analysts, sometimes called *systems architects*, study an organization's current computer systems and procedures, and design solutions to help the organization operate more efficiently and effectively. They bring business and information technology (IT) together by understanding the needs and limitations of both.	Bachelor's degree	$88,270
	**Database Administrators**	Database administrators (DBAs) use specialized software to store and organize data, such as financial information and customer shipping records. They make sure that data are available to users and secure from unauthorized access.	Bachelor's degree	$87,020
	**Information Security Analysts**	Information security analysts plan and carry out security measures to protect an organization's computer networks and systems. Their responsibilities are continually expanding as the number of cyberattacks increases.	Bachelor's degree	$95,510
	**Network and Computer Systems Administrators**	Computer networks are critical parts of almost every organization. Network and computer systems administrators are responsible for the day-to-day operation of these networks.	Bachelor's degree	$81,100

	OCCUPATION	JOB DUTIES	ENTRY-LEVEL EDUCATION	2017 MEDIAN PAY
	**Software Developers**	Software developers are the creative minds behind computer programs. Some develop the applications that allow people to do specific tasks on a computer or another device. Others develop the underlying systems that run the devices or that control networks.	Bachelor's degree	$103,560
	**Web Developers**	Web developers design and create websites. They are responsible for the look of the site. They are also responsible for the site's technical aspects, such as its performance and capacity, which are measures of a website's speed and how much traffic the site can handle. In addition, web developers may create content for the site.	Associate's degree	$67,990

Contacts for More Information

For more information about computer programmers, visit

Association for Computing Machinery

CompTIA

IEEE Computer Society

For information about opportunities for women pursuing information technology careers, visit

National Center for Women & Information Technology

O*NET

Computer Programmers

Suggested citation:

Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Computer Programmers, on the Internet at https://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm (visited *August 20, 2018*).

Last Modified Date: Friday, April 13, 2018

O*NET OnLine

Updated 2018

Summary Report for:
15-1131.00 - Computer Programmers

Create, modify, and test the code, forms, and script that allow computer applications to run. Work from specifications drawn up by software developers or other individuals. May assist software developers by analyzing user needs and designing software solutions. May develop and write computer programs to store, locate, and retrieve specific documents, data, and information.

Sample of reported job titles: Analyst Programmer, Application Programmer Analyst, Computer Programmer, Computer Programmer Analyst, Internet Programmer, Java Developer, Programmer, Programmer Analyst, Web Applications Programmer, Web Programmer

View report: Summary | Details | Custom

Tasks | Technology Skills | Tools Used | Knowledge | Skills | Abilities | Work Activities | Detailed Work Activities | Work Context | Job Zone | Education | Credentials | Interests | Work Styles | Work Values | Related Occupations | Wages & Employment | Job Openings | Additional Information

Tasks

5 of 15 displayed

- Write, analyze, review, and rewrite programs, using workflow chart and diagram, and applying knowledge of computer capabilities, subject matter, and symbolic logic.
- Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced.
- Perform or direct revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements.
- Write, update, and maintain computer programs or software packages to handle specific jobs such as tracking inventory, storing or retrieving data, or controlling other equipment.
- Consult with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes.

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Technology Skills

5 of 46 displayed Show 4 tools used

- **Compiler and decompiler software** — Command interpreters; Just-in-time compiler; Stage compiler; Threaded code compiler
- **Data base management system software** — Apache Hadoop; MongoDB; Oracle PL/SQL; Structured Query Report SQR
- **Development environment software** — Apache Maven; C; Microsoft PowerShell; Verilog
- **Object or component oriented development software** — C++; jQuery; Oracle Java; Python
- **Web platform development software** — AJAX; Drupal; LAMP Stack; Spring Framework

Hot Technology — a technology requirement frequently included in employer job postings.

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Knowledge

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- **Computers and Electronics** — Knowledge of circuit boards, processors, chips, electronic equipment, and computer hardware and software, including applications and programming.
- **Mathematics** — Knowledge of arithmetic, algebra, geometry, calculus, statistics, and their applications.
- **Engineering and Technology** — Knowledge of the practical application of engineering science and technology. This includes applying principles, techniques, procedures, and equipment to the design and production of various goods and services.
- **English Language** — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- **Customer and Personal Service** — Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.

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Skills

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- **Programming** — Writing computer programs for various purposes.
- **Active Listening** — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
- **Complex Problem Solving** — Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions.
- **Critical Thinking** — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.
- **Quality Control Analysis** — Conducting tests and inspections of products, services, or processes to evaluate quality or performance.

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Abilities

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- **Written Comprehension** — The ability to read and understand information and ideas presented in writing.
- **Near Vision** — The ability to see details at close range (within a few feet of the observer).
- **Oral Comprehension** — The ability to listen to and understand information and ideas presented through spoken words and sentences.
- **Deductive Reasoning** — The ability to apply general rules to specific problems to produce answers that make sense.
- **Inductive Reasoning** — The ability to combine pieces of information to form general rules or conclusions (includes finding a relationship among seemingly unrelated events).

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Work Activities

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- **Interacting With Computers** — Using computers and computer systems (including hardware and software) to program, write software, set up functions, enter data, or process information.
- **Processing Information** — Compiling, coding, categorizing, calculating, tabulating, auditing, or verifying information or data.
- **Analyzing Data or Information** — Identifying the underlying principles, reasons, or facts of information by breaking down information or data into separate parts.
- **Getting Information** — Observing, receiving, and otherwise obtaining information from all relevant sources.
- **Making Decisions and Solving Problems** — Analyzing information and evaluating results to choose the best solution and solve problems.

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Detailed Work Activities

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- Modify software programs to improve performance.
- Write computer programming code.
- Test software performance.
- Resolve computer software problems.
- Collaborate with others to resolve information technology issues.

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Work Context

5 of 17 displayed

- **Electronic Mail** — 100% responded "Every day."
- **Spend Time Sitting** — 90% responded "Continually or almost continually."
- **Face-to-Face Discussions**
- **Indoors, Environmentally Controlled**
- **Importance of Being Exact or Accurate** — 64% responded "Extremely important."

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Job Zone

Title	Job Zone Four: Considerable Preparation Needed
Education	Most of these occupations require a four-year bachelor's degree, but some do not.
Related Experience	A considerable amount of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified.
Job Training	Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.
Job Zone Examples	Many of these occupations involve coordinating, supervising, managing, or training others. Examples include accountants, sales managers, database administrators, graphic designers, chemists, art directors, and cost estimators.
SVP Range	(7.0 to < 8.0)

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Education

Percentage of Respondents	Education Level Required
88	Bachelor's degree
9	Associate's degree
3	Some college, no degree

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Credentials

Find Training | Find Certifications | Find Licenses | Find Apprenticeships

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Interests

All 2 displayed

Interest code: **IC** Want to discover your interests? Take the O*NET Interest Profiler at My Next Move.

- **Investigative** — Investigative occupations frequently involve working with ideas, and require an extensive amount of thinking. These occupations can involve searching for facts and figuring out problems mentally.
- **Conventional** — Conventional occupations frequently involve following set procedures and routines. These occupations can include working with data and details more than with ideas. Usually there is a clear line of authority to follow.

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Work Styles

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- **Attention to Detail** — Job requires being careful about detail and thorough in completing work tasks.
- **Analytical Thinking** — Job requires analyzing information and using logic to address work-related issues and problems.
- **Integrity** — Job requires being honest and ethical.
- **Cooperation** — Job requires being pleasant with others on the job and displaying a good-natured, cooperative attitude.
- **Independence** — Job requires developing one's own ways of doing things, guiding oneself with little or no supervision, and depending on oneself to get things done.

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Work Values

All 3 displayed

- **Achievement** — Occupations that satisfy this work value are results oriented and allow employees to use their strongest abilities, giving them a feeling of accomplishment. Corresponding needs are Ability Utilization and Achievement.
- **Working Conditions** — Occupations that satisfy this work value offer job security and good working conditions. Corresponding needs are Activity, Compensation, Independence, Security, Variety and Working Conditions.
- **Independence** — Occupations that satisfy this work value allow employees to work on their own and make decisions. Corresponding needs are Creativity, Responsibility and Autonomy.

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Related Occupations

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15-1121.00	Computer Systems Analysts	
15-1132.00	Software Developers, Applications	
15-1133.00	Software Developers, Systems Software	Bright Outlook Green
15-1141.00	Database Administrators	
15-1199.01	Software Quality Assurance Engineers and Testers	

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Wages & Employment Trends

Median wages (2017) $39.54 hourly, $82,240 annual

State wages Local Salary Info

Employment (2016) 295,000 employees

Projected growth (2016-2026) Decline (-2% or lower)

Projected job openings (2016-2026) 15,500

State trends Employment Trends

Top industries (2016) Professional, Scientific, and Technical Services
Information

Source: Bureau of Labor Statistics 2017 wage data and 2016-2026 employment projections. "Projected growth" represents the estimated change in total employment over the projections period (2016-2026). "Projected job openings" represent openings due to growth and replacement.

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Job Openings on the Web

Find Jobs

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Sources of Additional Information

All 7 displayed

Disclaimer: Sources are listed to provide additional information on related jobs, specialties, and/or industries. Links to non-DOL Internet sites are provided for your convenience and do not constitute an endorsement.

- Association for Computing Machinery
- Center of Excellence for Information and Computing Technology
- CompTIA
- IEEE Computer Society
- Institute for Certification of Computing Professionals
- Network and Systems Professionals Association
- Occupational Outlook Handbook: Computer programmers

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U.S. Bureau of Labor Statistics

Software Developers

Summary



Software developers design computer programs.

Quick Facts: Software Developers	
2017 Median Pay	$103,560 per year $49.79 per hour
Typical Entry-Level Education	Bachelor's degree
Work Experience in a Related Occupation	None
On-the-job Training	None
Number of Jobs, 2016	1,256,200
Job Outlook, 2016-26	24% (Much faster than average)
Employment Change, 2016-26	302,500

What Software Developers Do

Software developers are the creative minds behind computer programs. Some develop the applications that allow people to do specific tasks on a computer or another device. Others develop the underlying systems that run the devices or that control networks.

Work Environment

Many software developers work for firms that deal in computer systems design and related services, manufacturing, or for software publishers.

How to Become a Software Developer

Software developers usually have a bachelor's degree in computer science and strong computer programming skills.

Pay

The median annual wage for software developers, applications was $101,790 in May 2017.

The median annual wage for software developers, systems software was $107,600 in May 2017.

Job Outlook

Employment of software developers is projected to grow 24 percent from 2016 to 2026, much faster than the average for all occupations. Software developers will be needed to respond to an increased demand for computer software.

State & Area Data

Explore resources for employment and wages by state and area for software developers.

Similar Occupations

Compare the job duties, education, job growth, and pay of software developers with similar occupations.

More Information, Including Links to O*NET

Learn more about software developers by visiting additional resources, including O*NET, a source on key characteristics of workers and occupations.

What Software Developers Do



Developers create flow charts that help programmers write computer code.

Software developers are the creative minds behind computer programs. Some develop the applications that allow people to do specific tasks on a computer or another device. Others develop the underlying systems that run the devices or that control networks.

Duties

Software developers typically do the following:

- Analyze users' needs and then design, test, and develop software to meet those needs
- Recommend software upgrades for customers' existing programs and systems
- Design each piece of an application or system and plan how the pieces will work together
- Create a variety of models and diagrams (such as flowcharts) that show programmers the software code needed for an application
- Ensure that a program continues to function normally through software maintenance and testing
- Document every aspect of an application or system as a reference for future maintenance and upgrades
- Collaborate with other computer specialists to create optimum software

Software developers are in charge of the entire development process for a software program. They may begin by asking how the customer plans to use the software. They must identify the core functionality that users need from software programs. Software developers must also determine user requirements that are unrelated to the functions of the software, such as the level of security and performance needs. They design the program and then give instructions to programmers, who write computer code and test it.

If the program does not work as expected or if testers find it too difficult to use, software developers go back to the design process to fix the problems or improve the program. After the program is released to the customer, a developer may perform upgrades and maintenance.

Developers usually work closely with computer programmers. However, in some companies, developers write code themselves instead of giving instructions to programmers.

Developers who supervise a software project from the planning stages through implementation sometimes are called information technology (IT) project managers. These workers monitor the project's progress to ensure that it meets deadlines, standards, and cost targets. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers.

The following are examples of types of software developers:

Applications software developers design computer applications, such as word processors and games, for consumers. They may create custom software for a specific customer or commercial software to be sold to the general public. Some applications software developers create complex databases for organizations. They also create programs that people use over the Internet and within a company's intranet.

Systems software developers create the systems that keep computers functioning properly. These could be operating systems for computers that the general public buys or systems built specifically for an organization. Often, systems software developers also build the system's interface, which is what allows users to interact with the computer. Systems software developers create the operating systems that control most of the consumer electronics in use today, including those used by cell phones and cars.

Work Environment



Developers may oversee a team of people during the software development process.

Software developers, applications held about 831,300 jobs in 2016. The largest employers of software developers, applications were as follows:

Computer systems design and related services	35%
Software publishers	10
Finance and insurance	10
Manufacturing	7
Management of companies and enterprises	5

Software developers, systems software held about 425,000 jobs in 2016. The largest employers of software developers, systems software were as follows:

Computer systems design and related services	31%
Manufacturing	18
Software publishers	6
Finance and insurance	6
Engineering services	4

In general, software development is a collaborative process, and developers work on teams with others who also contribute to designing, developing, and programming successful software. However, some developers work at home.

Work Schedules

Most software developers work full time, and additional work hours are common.

How to Become a Software Developer



Software developers usually have a bachelor's degree in computer science and strong computer-programming skills.

Software developers usually have a bachelor's degree in computer science and strong computer programming skills.

Education

Software developers usually have a bachelor's degree, typically in computer science, software engineering, or a related field. Computer science degree programs are the most common, because they tend to cover a broad range of topics. Students should focus on classes related to building software to better prepare themselves for work in the occupation. Many students gain experience in software development by completing an internship at a software company while in college. For some positions, employers may prefer that applicants have a master's degree.

Although writing code is not their first priority, developers must have a strong background in computer programming. They usually gain this experience in school. Throughout their career, developers must keep up to date on new tools and computer languages.

Software developers also need skills related to the industry in which they work. Developers working in a bank, for example, should have knowledge of finance so that they can understand a bank's computing needs.

Advancement

Software developers can advance to become information technology (IT) project managers, also called computer and information systems managers, a position in which they oversee the software development process.

Important Qualities

Analytical skills. Developers must analyze users' needs and then design software to meet those needs.

Communication skills. Developers must be able to give clear instructions to others working on a project. They must also explain to their customers how the software works and answer any questions that arise.

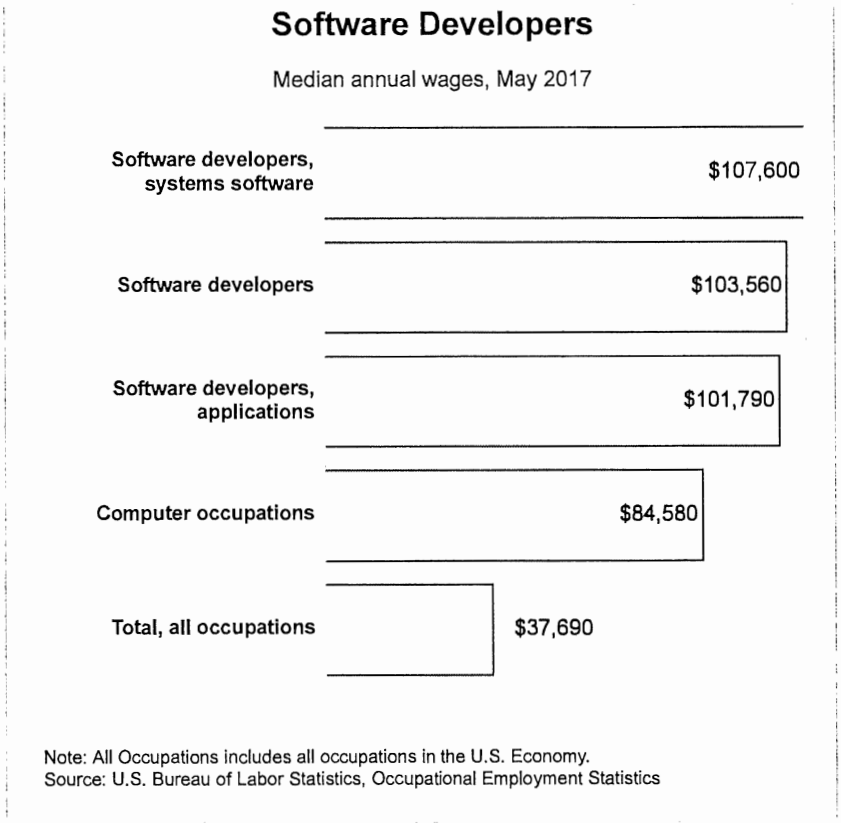
Creativity. Developers are the creative minds behind new computer software.

Detail oriented. Developers often work on many parts of an application or system at the same time and must therefore be able to concentrate and pay attention to detail.

Interpersonal skills. Software developers must be able to work well with others who contribute to designing, developing, and programming successful software.

Problem-solving skills. Because developers are in charge of software from beginning to end, they must be able to solve problems that arise throughout the design process.

Pay



Note: All Occupations includes all occupations in the U.S. Economy.
Source: U.S. Bureau of Labor Statistics, Occupational Employment Statistics

The median annual wage for software developers, applications was $101,790 in May 2017. The median wage is the wage at which half the workers in an occupation earned more than that amount and half earned less. The lowest 10 percent earned less than $59,870, and the highest 10 percent earned more than $160,100.

The median annual wage for software developers, systems software was $107,600 in May 2017. The lowest 10 percent earned less than $65,670, and the highest 10 percent earned more than $164,150.

In May 2017, the median annual wages for software developers, applications in the top industries in which they worked were as follows:

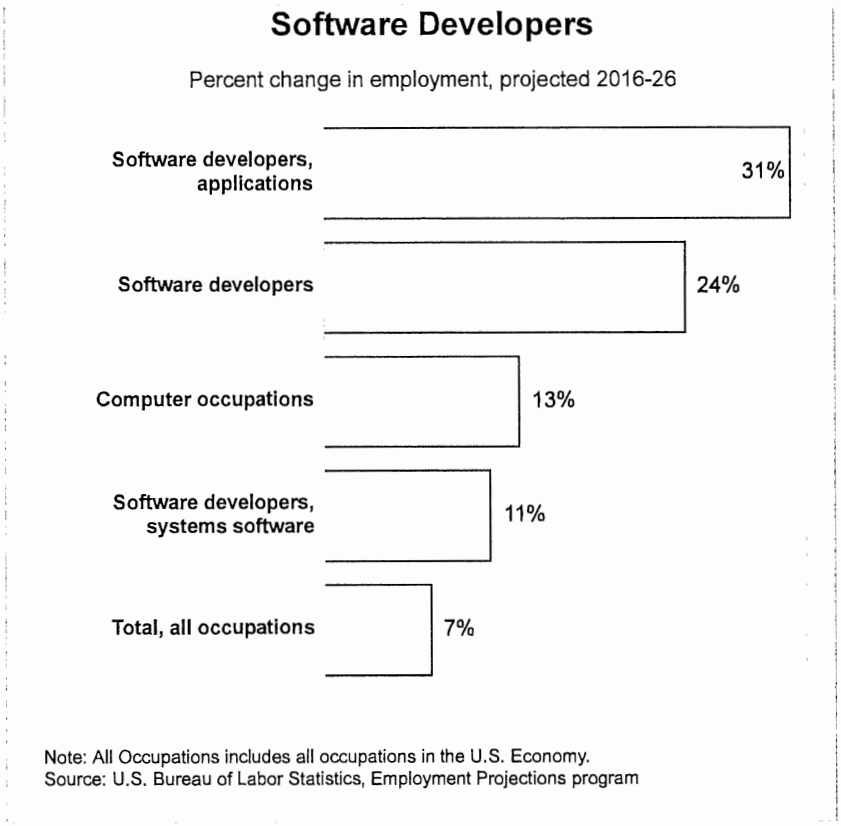
Software publishers	$112,230
Manufacturing	109,070
Finance and insurance	105,170
Management of companies and enterprises	100,430
Computer systems design and related services	98,450

In May 2017, the median annual wages for software developers, systems software in the top industries in which they worked were as follows:

Manufacturing	$115,420
Engineering services	113,500
Finance and insurance	109,260
Software publishers	108,610
Computer systems design and related services	106,180

Most software developers work full time, and additional work hours are common.

Job Outlook



Employment of software developers is projected to grow 24 percent from 2016 to 2026, much faster than the average for all occupations. Employment of applications developers is projected to grow 31 percent, and employment of systems developers is projected to grow 11 percent. The main reason for the growth in both applications developers and systems developers is a large increase in the demand for computer software.

The need for new applications on smart phones and tablets will help increase the demand for applications software developers.

The health and medical insurance and reinsurance carriers industry will need innovative software to manage new healthcare policy enrollments and administer existing policies digitally. As the number of people who use this digital platform increases over time, demand for software developers will grow.

Systems developers are likely to see new opportunities because of an increase in the number of products that use software. For example, more computer systems are being built into consumer electronics and other products, such as cell phones and appliances.

Concerns over threats to computer security could result in more investment in security software to protect computer networks and electronic infrastructure. In addition, an increase in software offered over the Internet should lower costs and allow more customization for businesses, also increasing demand for software developers.

Job Prospects

Job prospects will be best for applicants with knowledge of the most up-to-date programming tools and for those who are proficient in one or more programming languages.

Employment projections data for software developers, 2016-26

Occupational Title	SOC Code	Employment, 2016	Projected Employment, 2026	Change, 2016-26		Employment by Industry
				Percent	Numeric	
Software developers	—	1,256,200	1,558,700	24	302,500	—

SOURCE: U.S. Bureau of Labor Statistics, Employment Projections program

Occupational Title	SOC Code	Employment, 2016	Projected Employment, 2026	Change, 2016-26		Employment by Industry
				Percent	Numeric	
Software developers, applications	15-1132	831,300	1,086,600	31	255,400	xlsx
Software developers, systems software	15-1133	425,000	472,100	11	47,100	xlsx
SOURCE: U.S. Bureau of Labor Statistics, Employment Projections program						

State & Area Data

Occupational Employment Statistics (OES)

The Occupational Employment Statistics (OES) program produces employment and wage estimates annually for over 800 occupations. These estimates are available for the nation as a whole, for individual states, and for metropolitan and nonmetropolitan areas. The link(s) below go to OES data maps for employment and wages by state and area.

- Software developers, applications
- Software developers, systems software

Projections Central

Occupational employment projections are developed for all states by Labor Market Information (LMI) or individual state Employment Projections offices. All state projections data are available at www.projectionscentral.com . Information on this site allows projected employment growth for an occupation to be compared among states or to be compared within one state. In addition, states may produce projections for areas; there are links to each state's websites where these data may be retrieved.

CareerOneStop

CareerOneStop includes hundreds of occupational profiles with data available by state and metro area. There are links in the left-hand side menu to compare occupational employment by state and occupational wages by local area or metro area. There is also a salary info tool to search for wages by zip code.

Similar Occupations

This table shows a list of occupations with job duties that are similar to those of software developers.

	OCCUPATION	JOB DUTIES	ENTRY-LEVEL EDUCATION	2017 MEDIAN PAY
	**Computer and Information Research Scientists**	Computer and information research scientists invent and design new approaches to computing technology and find innovative uses for existing technology. They study and solve complex problems in computing for business, medicine, science, and other fields.	Master's degree	$114,520

	OCCUPATION	JOB DUTIES	ENTRY-LEVEL EDUCATION	2017 MEDIAN PAY
	**Computer and Information Systems Managers**	Computer and information systems managers, often called information technology (IT) managers or IT project managers, plan, coordinate, and direct computer-related activities in an organization. They help determine the information technology goals of an organization and are responsible for implementing computer systems to meet those goals.	Bachelor's degree	$139,220
	**Computer Hardware Engineers**	Computer hardware engineers research, design, develop, and test computer systems and components such as processors, circuit boards, memory devices, networks, and routers.	Bachelor's degree	$115,120
	**Computer Network Architects**	Computer network architects design and build data communication networks, including local area networks (LANs), wide area networks (WANs), and Intranets. These networks range from small connections between two offices to next-generation networking capabilities such as a cloud infrastructure that serves multiple customers.	Bachelor's degree	$104,650
	**Computer Programmers**	**Computer programmers write and test code that allows computer applications and software programs to function properly. They turn the program designs created by software developers and engineers into instructions that a computer can follow.**	**Bachelor's degree**	**$82,240**
	**Computer Support Specialists**	Computer support specialists provide help and advice to computer users and organizations. These specialists either support computer networks or they provide technical assistance directly to computer users.	See How to Become One	$52,810

	OCCUPATION	JOB DUTIES	ENTRY-LEVEL EDUCATION	2017 MEDIAN PAY
	**Computer Systems Analysts**	Computer systems analysts, sometimes called *systems architects*, study an organization's current computer systems and procedures, and design solutions to help the organization operate more efficiently and effectively. They bring business and information technology (IT) together by understanding the needs and limitations of both.	Bachelor's degree	$88,270
	**Database Administrators**	Database administrators (DBAs) use specialized software to store and organize data, such as financial information and customer shipping records. They make sure that data are available to users and secure from unauthorized access.	Bachelor's degree	$87,020
	**Information Security Analysts**	Information security analysts plan and carry out security measures to protect an organization's computer networks and systems. Their responsibilities are continually expanding as the number of cyberattacks increases.	Bachelor's degree	$95,510
	**Mathematicians and Statisticians**	Mathematicians and statisticians analyze data and apply mathematical and statistical techniques to help solve real-world problems in business, engineering, healthcare, or other fields.	Master's degree	$84,760
	**Postsecondary Teachers**	Postsecondary teachers instruct students in a wide variety of academic and technical subjects beyond the high school level. They may also conduct research and publish scholarly papers and books.	See How to Become One	$76,000
	**Web Developers**	Web developers design and create websites. They are responsible for the look of the site. They are also responsible for the site's technical aspects, such as its performance and capacity, which are measures of a website's speed and how much traffic the site can handle. In addition, web developers may create content for the site.	Associate's degree	$67,990

Contacts for More Information

For more information about software developers, visit

Association for Computing Machinery

IEEE Computer Society

Computing Research Association

CompTIA

For information about opportunities for women pursuing information technology careers, visit

National Center for Women & Information Technology

O*NET

Software Developers, Applications

Software Developers, Systems Software

Suggested citation:

Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Software Developers, on the Internet at https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm (visited *August 17, 2018*).

Last Modified Date: Friday, April 13, 2018

U.S. Bureau of Labor Statistics | Office of Occupational Statistics and Employment Projections, PSB Suite 2135, 2 Massachusetts Avenue, NE Washington, DC 20212-0001

www.bls.gov/ooh | Telephone: 1-202-691-5700 | Contact OOH

Exhibit D – Job Postings for Similar Positions

MAGNA IV
Printing Solutions Simplified

MAGNA IV submits the following related job postings for similar positions at similar industry companies for the position of Computer Programmers to establish that the position normally requires a bachelor's degree in computer science or a related field. MAGNA IV is provided the content and location of the job posting, with a detailed analysis as to why the position is similar to the Computer Programmer Position proffered by MAGNA IV.

JOB POSTING 1:

1.
Software Engineer
Job ID 7817
Date posted May. 14, 2018
Location Sussex, Wisconsin
Full Time / Part Time Full time (FT)
https://www.bequad.com/job/-/-/11056/8091993?src=JB-10101?utm_source=indeed.com&utm_campaign=quad/graphics&utm_medium=paid_search&utm_content=job_aggregator&ss=paid

A leading global provider of print and media solutions, Quad/Graphics is powered by a passion for innovation and the most advanced platform in the industry. Our collaborative team of "can-do" people continually challenge the status quo, creating groundbreaking solutions that push the boundaries of communications.

Job Description

Quad/Graphics is a global leader in developing innovative software for the commercial printing industry. With products spanning the range of image sensors, data analysis algorithms, print control, and machine control; Quad/Graphics provides the powerful cutting edge developments for both the market as well as our parent company Quad/Graphics. The QG Control Systems Engineering team which caters directly to Quad/Graphics' needs supports four different divisions and specializes in software development. Team products include machine control, print control, image rendering, camera systems, and data analysis.

Software Engineers will perform requirements analysis, design, modify, develop, write and implement software programming applications. Support and/or install software applications/operating systems. Participate in the testing process through test review and analysis, test witnessing and certification of software. Requires a bachelor's degree in a related area and < 6 years of experience in the required skills defined below with a solid understanding of the SDLC and the fundamental principles of software development. Software Engineer II will work closely with senior developers and project managers to design, develop, unit test, and support products across the team.

Qualifications

The successful candidate will be self-motivated, possess solid communication skills and have the ability to work independently within a team environment. He or she will be joining an established team of driven and motivated software professionals. The candidate will embrace challenge and seek improvement both in his or her their development projects as well as his or her their professional career. The QG Control Systems Engineering team is based on self-accountability, and teamwork, and seeks individuals who share these characteristics.

The candidate will be seeking a career in software development, not simply a job. The ability to approach projects with an open mind, express their opinions and contribute new ideas in a team environment are key qualities in this position. In addition the candidate must possess a willingness to learn new patterns, methods, processes, and technologies.

Required Skills:

- Visual Studio
- C# (.Net 3.5 or higher)
- ASP.Net
- SQL
- WPF
- Microsoft Office
- Requirements Analysis
- Network Communication Protocols
- Bachelor Degree in Computer Engineering, Computer Science, Software Engineering, or Information Systems
- Analytical Problem Solving

Desired but Not Required Skills:

- WCF
- C++, JavaScript
- Version Control experience
- Microsoft Visio
- Caliburn Micro, NHibernate, Entity Framework
- CSS (cascading style sheets)
- CSOM (client-side object model / sharepoint)

MAGNA IV ANALYSIS: The name of the position is Software Engineer, which is different from the name of Mr. Jiaqi Zhao's Computer Programmer position. However, comparing the described duties of Software Engineer position at Quad/Graphics and the duties of Mr. Jiaqi Zhao's Computer Programmer position, most of the duties are very similar, including "perform requirements analysis, design, modify, develop, write and implement software programming applications; support and/or install software applications/operating systems; and participate in the testing process through test review and analysis, test witnessing and certification of software." Mr. Jiaqi Zhao analyzes programming requirements, designs, modifies, develops, writes,

implements, and tests software programming applications as Computer Programmer. Mr. Jiaqi Zhao also supports, and installs software applications. Therefore, the Software Engineer position at Quad/Graphics and the Computer Programmer position at MAGNA IV Color Imaging Inc. perform similar duties. Therefore, Software Engineer at Quad/Graphics and Computer Programmer at MAGNA IV Color Imaging, Inc. are parallel positions.

As described on Quad/Graphics's website, Quad/Graphics is a "provider of print and media solutions". In this way, Quad/Graphics is within MAGNA IV Color Imaging, Inc.'s industry, and is similar to MAGNA IV Color Imaging, Inc., since MAGNA IV Color Imaging, Inc. provides printing and marketing services.

According to Occupational Outlook Handbook (OOH), Computer Programmer "write programs in a variety of computer languages; Update and expand existing programs; Test programs for errors and fix the faulty lines of computer code; Create and test code in an integrated development environment (IDE)." As demonstrated on O*NET, Computer Programmer "write, analyze, review, and rewrite programs; Perform or direct revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements." The job duties of the Software Engineer position at Quad/Graphics have a marked similarity to the aforementioned job duties of Computer Programmer. The Software Engineer position at Quad/Graphics requires various programming related experiences, such as experiences in integrated development environment, in programming languages, in problem solving, and in requirements analysis. It can be concluded that the job posting represents the industry standards for the Computer Programmer position.

The Software Engineer position at Quad/Graphics is within the industry of MAGNA IV Color Imaging, Inc., and Quad/Graphics is similar to MAGNA IV Color Imaging, Inc. because both organizations provide printing and marketing services. The job posting represents the industry standards for the position. As stated in the job posting, Bachelor's Degree in Computer Science or equivalent experience is needed to perform the job duties for this position.

JOB POSTING 2

2.
Date: Retrieved on Aug. 4, 2018
Source: Minuteman Press Website
Link to the job posting:
https://www.minutemanpress.com/company-information/careers.html

Work With Us

Minuteman Press International is a leader in the world of design, printing, marketing, and communication technology. We have grown our franchise system to over 950 locations throughout North America, the United Kingdom, Australia and South Africa. The success of our system is our people, the owners of locations, and our local staff that support them. We are headquartered in Long Island, NY where our company began over 40 years ago.

Entry Level Programmer - Corporate Position in Farmingdale, New York

We are looking for an entry level personable and knowledgeable person to assist in the development of our proprietary software and web solutions. You will be joining our IT team which is made up of very experienced and long term employees who will train you in all aspects of being successful in this position. Our company and particularly our IT department is growing at a fast pace and we need the right person to fill the position quickly.

Minuteman Press International is the franchisor for Minuteman Press printing locations throughout the world. We are a leader in our industry and have been franchising for over 40 years. We develop, distribute & support custom software to our locations. We are looking for a recent college graduate with a degree in Computer Science (or similar field) to work with our project team in the areas listed below.

Responsibilities include, but are not limited to:

- Development of Web Based Utilities (LAMP)
- Assisting with development and integration of web based utilities with an existing VB.NET platform
- Troubleshooting applications
- Software Documentation

Requirements:

- Degree in Computer Science (or similar field)
- Experience with PHP and MySQL
- Experience with VB.NET, C#, Visual Studio, and MS SQL a plus
- Experience with WordPress
- Math skills
- Problem solving skills

MAGNA IV ANALYSIS: The name of the position is Entry Level Programmer, which is very similar to Mr. Jiaqi Zhao's Computer Programmer position. The job duties are also very similar

to Mr. Jiaqi Zhao's duties as Computer Programmer. Working on the development and integration of web based utilities, troubleshoot applications, and software documentation are also duties which Mr. Jiaqi Zhao has been performing as Computer Programmer at MAGNA IV Color Imaging, Inc. As mentioned in the job duties, the Entry Level Programmer at Minuteman Press works with LAMP, which is the acronym for Linux operating system, Apache HTTP Server, MySQL relational database management system, and PHP programming language.

Mr. Jiaqi Zhao utilities LAMP to perform his job duties as well. Therefore, Entry Level Programmer at Minuteman Press and Computer Programmer at MAGNA IV Color Imaging, Inc. are parallel positions.

As demonstrated in the "Work With Us" section of the website, Minuteman Press International works with "design, printing, marketing, and communication technology". MAGNA IV Color Imaging, Inc. focuses on similar areas such as printing and marketing services. Therefore, Minuteman Press International is within our industry and is similar to MAGNA IV Color Imaging, Inc.

According to the job description for this Entry Level Programmer position at Minuteman Press International, the duties include writing programs in different computer languages, writing code in an integrated development environment (IDE), documenting program development, and developing websites etc. As written on Occupational Outlook Handbook (OOH), Computer Programmer "write programs in a variety of computer languages; Create and test code in an integrated development environment (IDE)" O*NET Online mentions that Computer Programmer "compile and write documentation of program development and subsequent revisions, inserting comments in the coded instructions so others can understand the program; Develop Web sites." The job duties of the Entry Level Programmer position at Minuteman Press International are very similar to the preceding job duties. The Entry Level Programmer position at Minuteman Press International requires experiences in programming languages, which are essential for Computer Programmers. Therefore, the job posting represents the industry standards for the Computer Programmer position.

The Entry Level Programmer position at Minuteman Press International is within the industry of MAGNA IV Color Imaging, Inc., and Minuteman Press International is similar to MAGNA IV Color Imaging, Inc. because both organizations provide printing and marketing services. The job posting represents the industry standards for the position. As stated in the job posting, Bachelor's Degree in Computer Science or equivalent experience is needed to perform the job duties for this position.

POSITION 3:

3.
Date: Retrieved on July 30, 2018
Source: Vistaprint Careers Website
Link to the job posting:
https://careers.vistaprint.com/job-description/?id=24216

Job Title: Software Engineer II

- **Job ID**
- 24216
- **Category**
- Software Development

Job Description

Come join the team that is revolutionizing one of the most successful e-commerce companies in the world! As a member of the Image Processing and Algorithms Squad, you will join a group of pragmatic visionaries and scientists that are leveraging machine learning to solve complex problems that no other company has. At present, we are chewing on the next generation embroidery digitization pipeline, image resolution enhancement and interactive vectorization to name a few.

You are someone who can argue the importance of PUTs being idempotent and who knows REST is not only something you do when asleep. You demand continuous delivery, automated testing and have a strong opinion on how a modern software engineering ecosystem should work. You write great code, and expect the same of others on the team.

As a **Software Engineer II**, you provide the architectural expertise and deliver solution to help drive our Continuous Integration and Delivery offerings and other modern IT infrastructure for an ecosystem of microservices. You will be hands on writing beautiful, highly scalable code that will fuel our growth towards $2B in revenue.

Our technology ecosystem contains over a dozen micro-services, and is growing. Our services are C#/Node based, running in the AWS Cloud. Additional tools we use on a daily basis include Git/Stash, Jira, CodeDeploy, dynamoDB, Artifactory, Slack and Jenkins. We believe that having a diverse toolbox allows us to solve a larger array of challenges using the right tools, and that smart people will make smart decisions on which tools to use. We're constantly looking for new and interesting ways to solve problems.

We're seeking someone who is passionate about automation and is comfortable in the construction, automation, management, administration, and operation of CI/CD systems.

In this role, you will help empower developers to deliver better software faster by...

... designing and implementing CD/CD solutions

... architecting a modern, operable, and scalable infrastructure using cloud technologies

... documenting and coaching developers in proper operations concerns and practices.

If you are as excited as us about building highly scalable and performant solutions at web scale, you should come talk with us!

To be successful, you will need:

- Bachelor's degree in Computer Science or equivalent experience
- Fluency in at least one mainstream object-oriented development language, with Java or .NET being preferred
- Experience with source code management, ticketing systems, continuous integration, continuous deployment, logging, monitoring, alerting, and trending services
- Demonstrated experience supporting software products in a production environment
- Experience in recent, modern software development and a desire to write (and review) code every day
- Passion for building high volume, distributed and scalable RESTful services in a continuous delivery environment
- Proficiency with a major scripting language such as Ruby or JavaScript
- Ability to excel on an extremely talented team in a fast paced environment
- Experience with high volume transactional systems

"Vistaprint, a Cimpress company, empowers millions of business owners worldwide to market themselves professionally. Our wide range of quality products and affordable prices, along with design tools suited to every skill level and need, mean everyone can create the customized materials they need to get their message across. And it all started the way most businesses do, with one entrepreneur's ambitious goal.

About 20 years ago, Robert Keane wanted to give small business owners access to the same high-quality, custom-printed products that bigger companies (with bigger print budgets) enjoyed. He developed a patented technology that delivers professional-quality printing in small quantities, affordably. Next, he took a process that was traditionally only available offline and made it possible for business owners to create and order their custom materials online – from the convenience of their own computers. Millions of customers (and billions of business cards) later, we've greatly expanded our offerings and advanced our technology, and our commitment to helping you promote your business is stronger than ever. We're confident you'll be 100% satisfied with our products, quality, design experience and attentive service. In fact, it's absolutely guaranteed."—www.vistaprint.com

MAGNA IV ANALYSIS: The name of the position is Software Engineer II, which is different from the name of Mr. Jiaqi Zhao's Computer Programmer position. However, comparing the described duties of Software Engineer II position at Vistaprint and the duties of Mr. Jiaqi Zhao's Computer Programmer position, most of the duties are very similar, include writing code and designing software solutions. Mr. Jiaqi Zhao develops and writes software as Computer Programmer. The Software Engineer II position at Vistaprint is categorized into Software Development category. It mentioned in the job posting that Vistaprint's services are C#/Node based. MAGNA IV Color Imaging, Inc. have C#/Node based projects as well. The Software Engineer II position at Vistaprint and the Computer Programmer position at MAGNA IV Color Imaging Inc. work on similar projects in Software Development area and perform similar duties. Therefore, Software Engineer II at Vistaprint and Computer Programmer at MAGNA IV Color Imaging, Inc. are parallel positions.

MAGNA IV Color Imaging, Inc. is within printing and marketing industry. According to the preceding company description on Vistaprint's website, Vistaprint provides printing and marketing services, which demonstrates that Vistaprint is within our industry and is similar to MAGNA IV Color Imaging, Inc.

Occupational Outlook Handbook (OOH) states that Computer Programmers typically "write programs in a variety of computer languages; Test programs for errors and fix the faulty lines of computer code". According to O*NET Online, Computer Programmers "write, update, and maintain computer programs or software packages to handle specific jobs". Computer Programmers "assign, coordinate, and review work and activities of programming personnel". The description of job duties of the Software Engineer II at Vistaprint mentions that the position will work with writing code and software applications, and work with developers. This job posting represents the industry standards for the position, not only because of the job duties, but also because of the experience requirements of the position. The position requires experiences in programming languages, working with code, supporting software, software development, and other related fields. The aforementioned requirements of experience are closely related to the duties stated by Occupational Outlook Handbook and O*NET, for the fact that both the requirements and the stated duties are pertaining to programming area.

As proved above, the Software Engineer II position at Vistaprint is within the industry of MAGNA IV Color Imaging, Inc., and Vistaprint is similar to MAGNA IV Color Imaging, Inc.

because both organizations provide printing and marketing services. The job posting represents the industry standards for the position. As stated in the job posting, Bachelor's Degree in Computer Science or equivalent experience is needed to perform the job duties for this position.

POSITIONS 4 – 6: MAGNA IV further submits the following Computer Programmer related positions in similar industries as proof that the position normally requires obtainment of a bachelor's degree in computer science or related field.

4.
Date: Retrieved on August 25th, 2018
Source: Indeed
Link to the job posting:
https://www.indeed.com/viewjob?jk=c09c55e048e6dcee&from=recjobs&vjtk=1cm62kr90aet5bq3

Software Engineer

Job Title:

Software Engineer

Reports to:

Director, Core Development

SUMMARY

Fairfax Imaging, Inc. is looking for an energetic, dependable, experienced and professional software programmer with experience in the C# language within .NET/WCF framework and JavaScript in the React environment. The Software engineer will join the Company's Core Development Team, and will work closely with other team members on supporting and enhancing the Company's software product line utilizing the latest Company technologies and tools. The Software Engineer will be involved in all aspects of the software development lifecycle.

PRIMARY RESPONSIBILITIES

· Design and develop new application / components primarily in the C# language within .NET/WCF framework

· Develop applications in HTML5 using React JavaScript

· Maintain and enhance Company's existing software

· Perform unit testing

· Contribute to integration testing

· Evaluate 3rd party software and develop recommendations

· Provide assistance and training to Professional Services and Support groups.

· Follow Company's source control policies and procedures

· Maintain confidentiality with regard to the information being processed, stored or accessed

· Other duties as assigned

KNOWLEDGE AND SKILL REQUIREMENTS

· Bachelor's Degree in Computer Science or related field

· Minimum of 5 years of working in Software Development with minimum of 3 years actively working with C# and .NET

· Minimum of 2 years of experience with JavaScript and HTML5

· Must possess strong analytical and problem solving skills

· Must have strong knowledge of the Software Development Life Cycle (SDLC) best practices

· Knowledge of relational database and Structured Query Language (SQL)

· Strong writing and communication skills

· Object Oriented Design and familiarity with design patterns is a plus

WORKING CONDITIONS

Office location is Rockville, MD. Working conditions are normal for an office environment. Work requires extensive work using a computer.

COMPANY BACKGROUND

Fairfax Imaging is a small, entrepreneurial, dynamic company with exciting projects, challenging deadlines, great co-workers, pleasant working environment, and competitive salary and benefits. Fairfax Imaging provides state-of-the-art products and integration services to the payment industries and has been doing so since 1994. Commitment to quality and customer service has made Fairfax Imaging a leader in its industry.

OTHER REQUIREMENTS

Must be authorized to work in the United States without Company sponsorship.

Job Type: Full-time

Experience:

- JavaScript and HTML5: 2 years (Required)

Location:

- Rockville, MD (Required)

Work authorization:

- United States (Required)

5.

Date: Retrieved on August 25th, 2018
Source: Jobvite
Link to the job posting:
https://jobs.jobvite.com/zazzle/job/o6QB5fwm?utm_campaign=google_jobs_apply&utm_source=google_jobs_apply&utm_medium=organic

Software Engineer

Description

Position Overview:

We're looking for highly motivated individuals for an engineering position on the Zazzle core development team. As part of a fast paced organization, this position requires that the candidate be able to work closely with product management, business development, site operations, and quality assurance. The candidate is expected to be a self-starter, a team player, and a strong driver for results and continuous improvement. We're looking for superstar software engineers with a (1) profound passion to innovate, (2) who are motivated by tackling great technological challenges, (3) who want to work beside those just as passionate, and (4) are itching to do the best work of their lives.

Responsibilities:

- Develop and operate search software including indexing, query parsing, algorithms on all the Zazzle search servers.
- Scale the search server clusters to accommodate the increasing traffic by performance tuning.

Required Skills:

- Top-notch analytical and problem solving skills.
- Strong of Lucene, ElasticSearch or SOLR.
- Strong Java/C#, or other modern OO programming language skills.
- Strong production debugging and performance tuning skills.
- Knowledge of SQL and multi-tier server technologies.
- Experience building any facet of large-scale websites a big plus.

Education Requirement

- Bachelor of Science or above in Computer Science or a related field.

Career Development And Training

- Lots of internal tech talks by engineering team members.
- Many opportunities to join various industry conferences.
- Project rotations with lots of opportunity to work on the latest technologies.

6.

Date: Retrieved on August 31st, 2018
Source: Menasha Packaging
Link to the job posting:

https://menasha.socialsourcingnetwork.com/job/6240/ERP%20Analyst%20IV/

ERP Programmer Analyst

Job Location

Neenah, WI US

Job Category

Information Technology

ABOUT US (AND OUR EXCITING FUTURE)

Menasha Corporation is all about possibilities. Our two businesses, Menasha Packaging and ORBIS Corporation, are leaders in their industries, providing corrugated and plastic packaging products and related services to major global companies.

Our employees make the difference, proving that great ideas, collaboration and quality turn possibilities into success. Working at Menasha Corporation means that your insights provide cutting-edge solutions for our customers. If you like to make things happen and are passionate about what you do, you're going to want to be here.

Join us and become part of the power behind possible.

About The Opportunity

Position Summary

The ERP Programmer Analyst at Menasha Packaging Company, LLC in Neenah, Wisconsin will design, develop, and test complex programs to support SAP Business Transformation/Implementation. Apply experience with UX development methodologies (HTML-5, XSLT, Java Script, CSS, Ajax and UI5) and architecture and design for UX applications to ensure that UX software can be completely integrated into overall ERP system. Utilize experience with SAP Application Development, including BLS, Display Templates, Query Templates, MDOs, SQL and Oracle Database Objects. Liaise between technical user-interface development teams and related functional teams and ensure proper integration of business processes and procedures with information technology solution. Define complex technical requirements for ongoing projects and future functionality to meet business requirements and improve system efficiency. Work through entire project lifecycle, including analysis, design, development, implementation, support, and enhancement. Provide technical support to users on matters related to delivered solutions. Utilize programmer analyst and development experience to enable the capability to prepare comprehensive and thorough technical program documentation, including but not limited to specifications, test conditions, test plans, and test data. May travel to various and unanticipated worksites throughout the United States.

Education / Certifications

Education Required

Requires a Bachelor's degree in Computer Science, Computer Engineering, Information Systems, Information Technology or a related field plus five years of programmer analyst experience.

Skills & Experience

Work Experience Required

Five years of experience must include five years of experience with each of the following: (1) UX development methodologies including HTML-5, XSLT, Java Script, CSS, Ajax and UI5; (2) SAP Application Development, including BLS, Display Templates, Query Templates, MDOs, SQL and Oracle Database Objects; (3) project lifecycle, including analysis, design, development, implementation, support, and enhancement; and (4) architecture and design for UX applications.

Additional Requirements

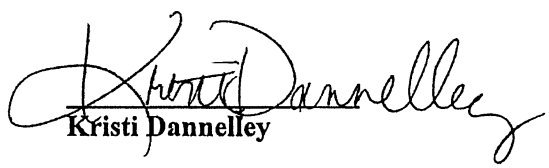
Interested candidates should submit a resume to jobs@menasha.com. Reference job code "266" in the subject line.

About Menasha Packaging

Menasha Packaging Company is a leading designer and manufacturer of graphic consumer corrugated packaging, merchandising solutions, food packaging, shipping containers, material handling solutions, and pack-out and fulfillment services. As the largest independent retail-focused display and packaging company in North America we set new standards in sustainable packaging, and our printing and structural design capabilities are unrivaled in the industry. Our Retail Integration Institute (RII) Group uses an exclusive merchandising model with processes specifically designed to bridge the gap between consumer packaged goods companies and retailers. We currently operate seven RII campuses in geographically dispersed locations. Our 3,200+ employees include more than 100 designers and more than 50 project managers who, together with our highly skilled workforce, develop new, innovative and cutting-edge solutions for global customers. With over 40 locations we are geographically positioned to serve major food, beverage, consumer products, entertainment, electronics, healthcare and pharmaceutical companies with superior products and fulfillment services.

As an operating company of Menasha Corporation, we celebrate over 167 years of unwavering dedication to a sustainable business strategy that focuses on keeping pace with change and market trends. Menasha Corporation is a privately held company comprised of two subsidiaries: Menasha Packaging Company and ORBIS Corporation. As one of America's oldest family-owned manufacturing companies, Menasha Corporation employs over 5,000 in over 100 facilities in North America and Europe.

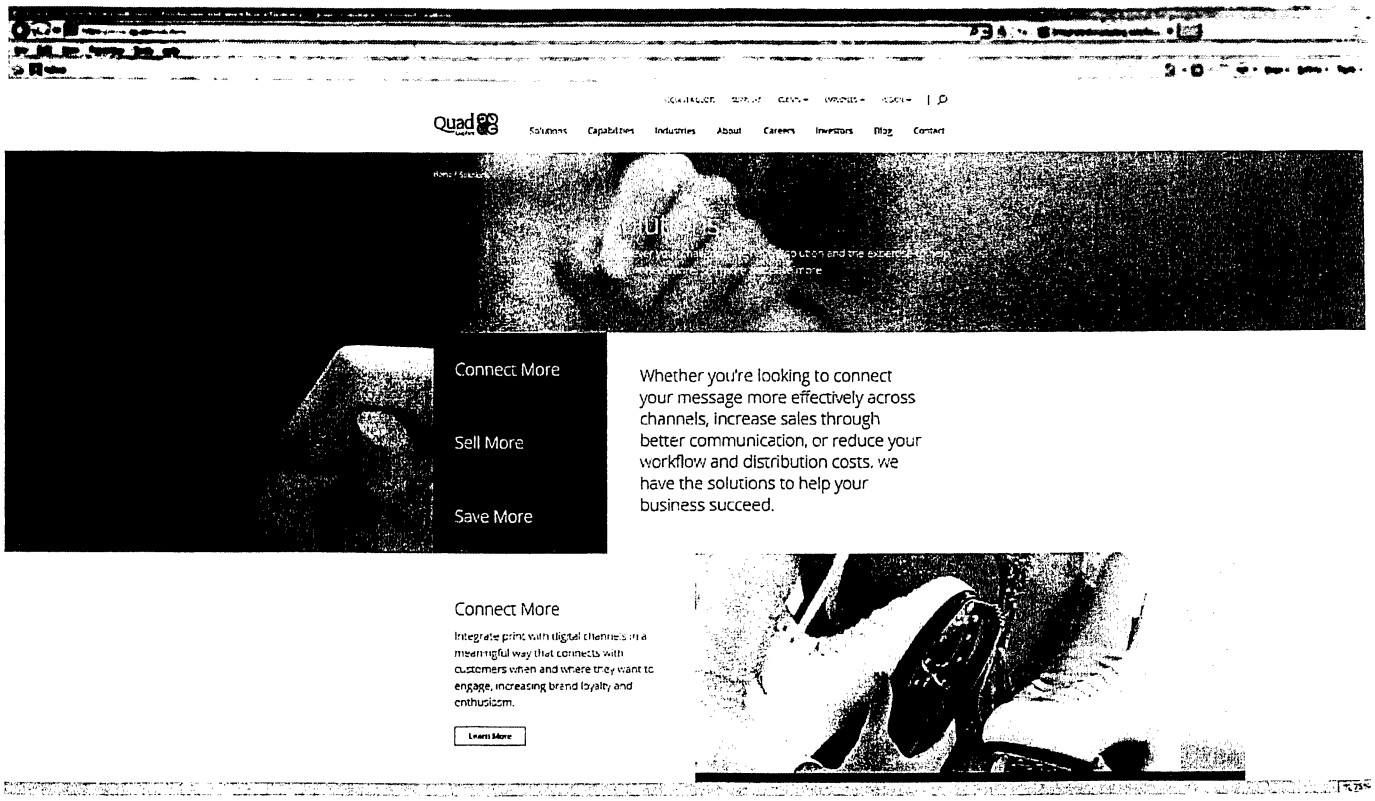
I, Kristi Dannelley respectively submit the above documentation on behalf of MAGNA IV. My position at MAGNA IV is President and I have direct knowledge about the duties and requirements of the position of Computer Programmer at MAGNA IV



Kristi Dannelley

September 25, 2018
501-376-2397
Kristi@magna4.net

1. QUAD GRAPHICS



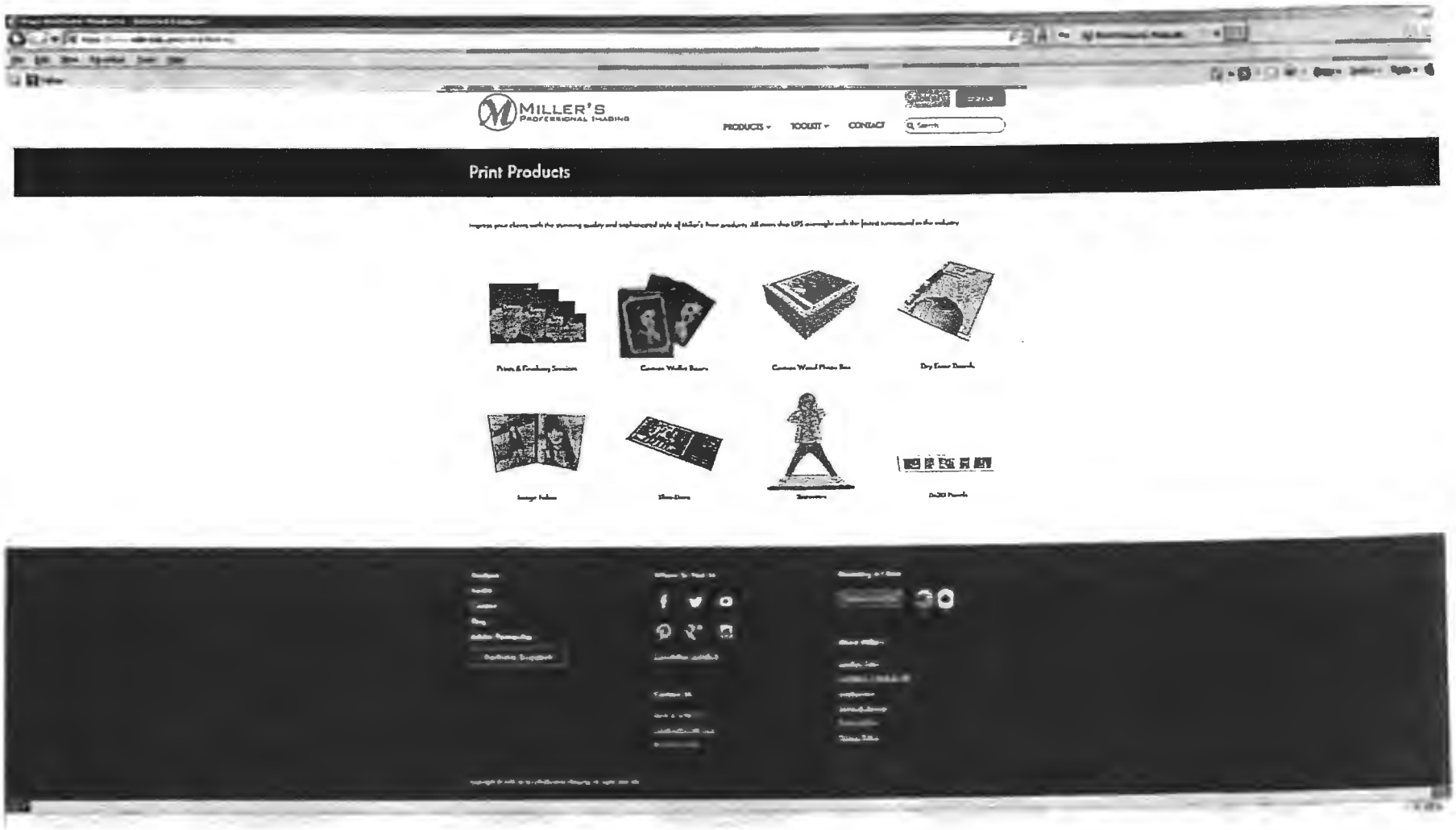
2. Minuteman Press



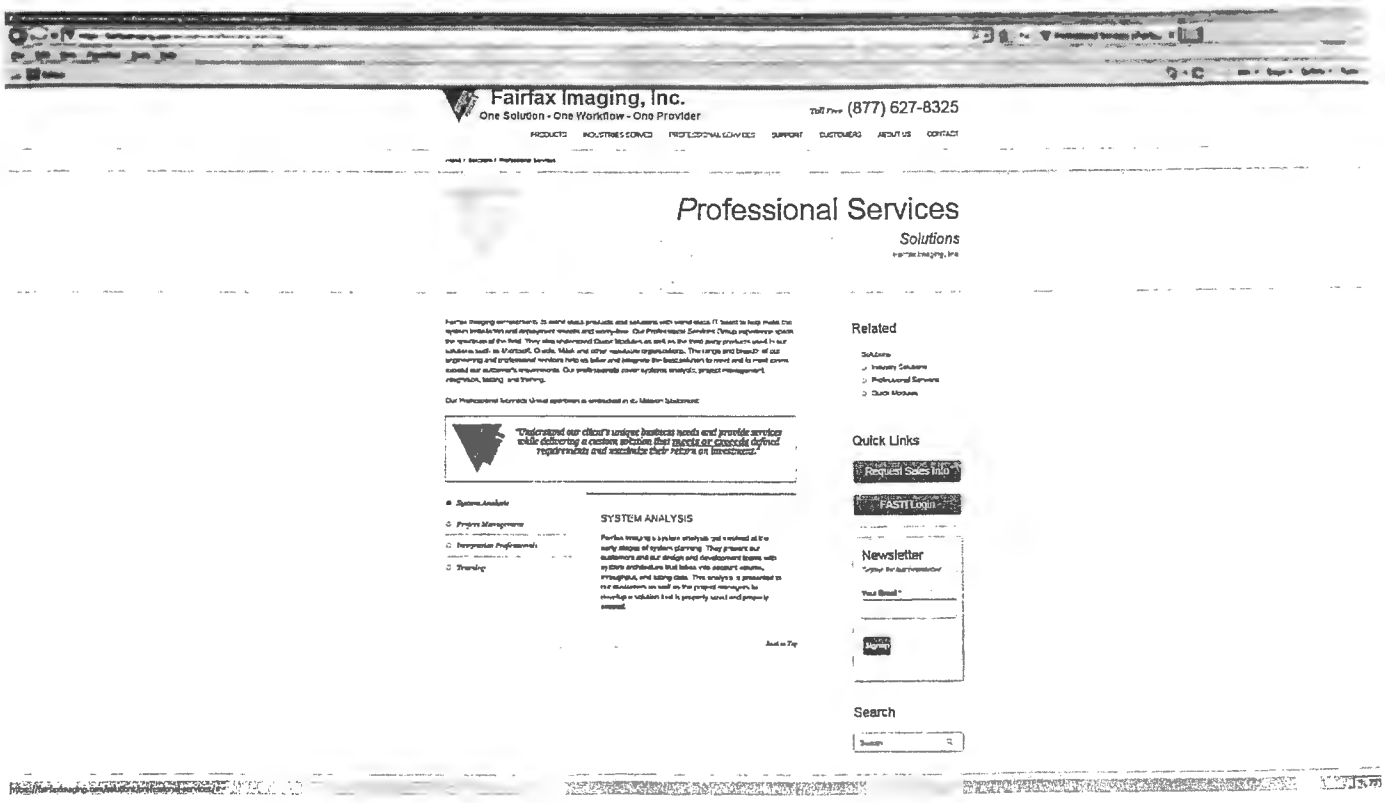
3. VISTA PRINT



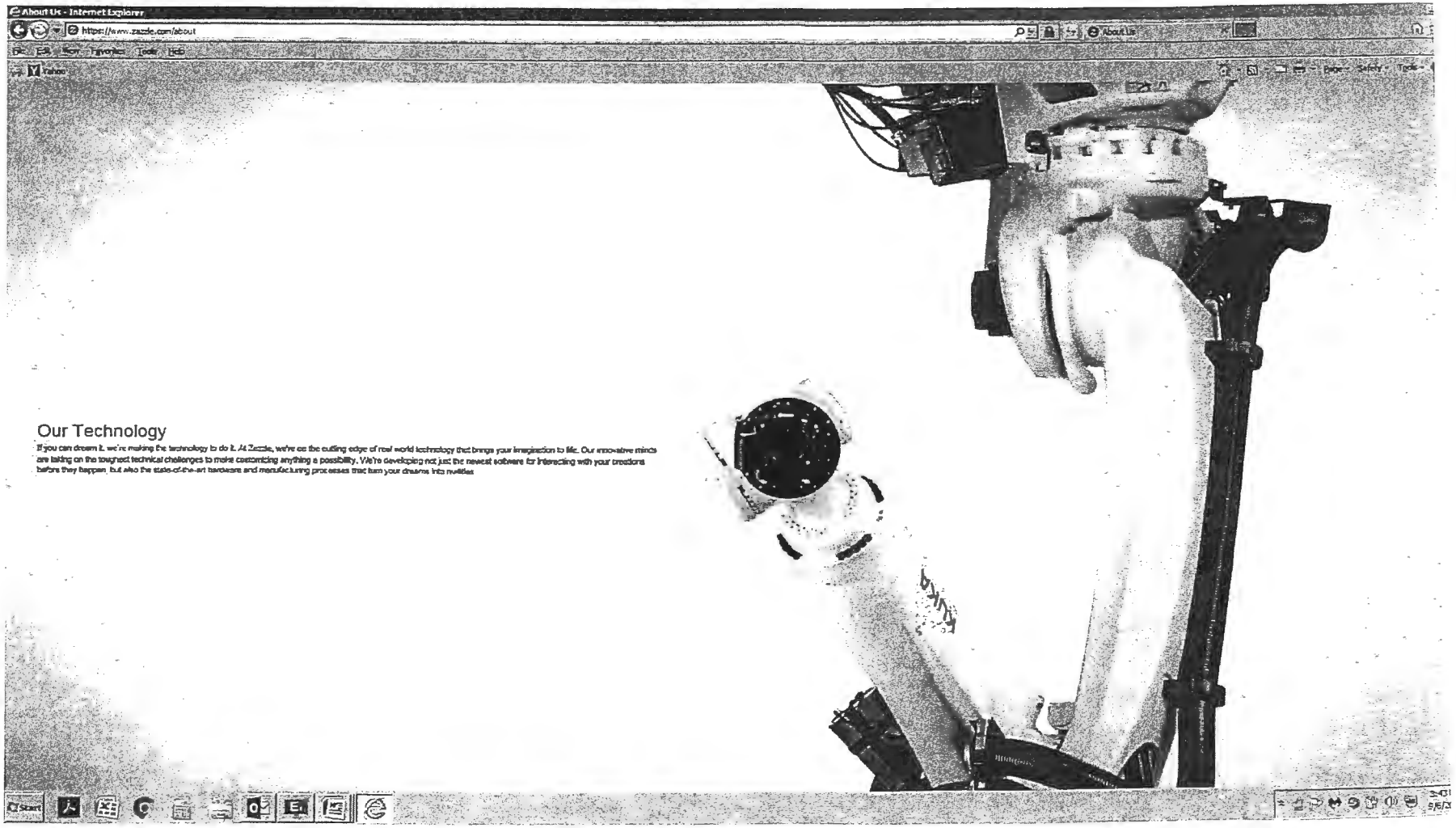
4. MILLERS PROFESSIONAL IMAGING



5. FAIRFAX IMAGING



6. Zazzle


About Us - Internet Explorer
Our Technology
If you can dream it, we're making the technology to do it. At Zazzle, we're on the cutting edge of real world technology that brings your imagination to life. Our innovative minds are taking on the toughest technical challenges to make customizing anything a possibility. We're developing not just the newest software for interacting with your creations before they happen, but also the state-of-the-art hardware and manufacturing processes that turn your dreams into realities

7. Menasha


MENASHA
Home
About
End-To-End Solutions
Gallery
News & Events
Sustainability
Locations
Contact Us
Lay's
Proven processes and uncommon executions that drive retail sales
It's a busy retail world. We make sense of the chaos and create retail merchandising solutions that stop traffic, grave attention, and move product to the cart. Our customers' success speaks for itself. At Menasha, we use proprietary tools and our Merchandising Model to bring your retail packaging and promotional displays to market.
We understand your brand objectives, gather shopper retail insights that we activate throughout the design development process, and utilize our supply chain expertise. This makes us the best choice as a supply chain partner to manufacture, fulfill, and distribute your programs. It's what we do best.
Click to see our Retail Merchandising Solution Products
• Displays
• POS Print Solutions
• Labels
• Gift Sets and Special Packs
MENASHA
CLICK TO ENLARGE
Retail & Category Insights

Exhibit E – Expert Letters with C.V.s



September 12, 2018

To: U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St.
St. Albans, VT 05479

Dear USCIS Officer,

My name is John Casey Winters and I am the System Administrator at MAGNA IV Color Imaging, Inc. I am submitting this expert letter to clarify and provide expert testimony proving that the position of Computer Programmer offered by MAGNA IV Color Imaging, Inc. (Magna IV) is a specialty occupation requiring a Bachelor's Degree in the specific specialty of Computer Science, or closely related field, such as Mathematics or Software Engineering. Indeed, based upon my expert opinion, the overwhelming vast majority of Computer Programmer positions which require the ability to develop complex computer programs such as Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development with experience and an understanding of C#, SQL, .Net, PHP, HTML, CSS, Javascript, and Object oriented programing require a Bachelor's Degree in Computer Science, and as such, a Bachelor's Degree is normally required for such a position.

Our company MAGNA IV is a well-established commercial printing company beginning operations in 1976 with three employees and has grown to a present day staff of sixty-three (63) employees. MAGNA IV is one of the largest printers in the mid-south and service customers throughout the United States. We have been creating high-quality print and marketing products for more than 40 years. We recognize the need for special skilled employees like Mr. Jiaqi Zhao and have found his skill set is scarce in the current employment workforce.

This opinion letter is written based on my experiences as a System Administrator and more than twelve (12) years of database and system administration. I am very familiar with the Computer Programmer position at MAGNA IV. As Customer Service Manager and System Administrator at MAGNA IV, I have been assisting with the guidance and training of the Computer Programmer position since 2013. In general, the Computer Programmer position works with writing, updating, testing, analyzing, reviewing, and rewriting programs; developing websites; defining and resolving issues in the running of programs; writing extensions for software, servers, or systems; managing databases, etc. Skills needed to perform the tasks include knowledge to various programming languages; knowledge to database, server, system; general understanding of different fields related to Computer Science, etc.

At the position of Customer Service Manager and System Administrator, I have a clear understanding of the interrelationship between our products/services and the systems. Our main products and services are marketing and printing for individual and companies/organizations.

Software, systems, and servers etc. are essential components which assist the formalization of products and services. Mr. Jiaqi Zhao, as Computer Programmer, plays an important role in working on essential job duties related to the aforementioned components.

The Computer Programmer position of MAGNA IV is so complex or unique that it can be performed only by an individual with a bachelor's degree in Computer Science, or its equivalent. The job duties require knowledge from different aspects in Computer Science area.

For example, one of our major products is the printing of postcards, business cards, and flyers etc. Our clients include companies, national organizations, and non-profit organizations. The majority of the orders are placed through PrestaShop, an e-commerce solution. Given the fact that a large amount of clients order on PrestaShop for our products, it is common to face a situation that certain products are temporarily sold out, or changes on our inventory, which is common for e-commerce industry. Mr. Jiaqi Zhao works on the e-commerce platform in making sure the contents showing on the platform matches the current inventory information. In order to complete this task, Mr. Jiaqi Zhao needs to cooperate with fulfillment department to guarantee the accuracy of the information displayed on the website. Mr. Jiaqi Zhao utilizes the PHP programming language in modifying, removing, and editing the inventory information on PrestaShop. To prevent robots from having improper access to the website, Mr. Jiaqi Zhao is also responsible for the recapture process by using Google APIs and PHP programming language. The complicated programming and sophisticated understanding of the software processes require advanced knowledge, programming skills, and information security concepts which can only be obtained from earning a Bachelor's degree in Computer Science.

Additionally, another e-commerce platform which is used at MAGNA IV is Pageflex. Each user has a built-in profile which saves the information which can be applied to the printing design of products. Mr. Jiaqi Zhao is responsible for highly complicated and sophisticated software support on Pageflex systems to ensure the property processing and functioning of the business processes. Mr. Jiaqi Zhao is also responsible for modifying extensions related to this program on the website, and must do so utilizing C# programming. One of the extensions is used to calculate shipping cost easily. In the database, each product has a code which can be used to refer to its shipping cost. The formula in the extension calculates final shipping costs for orders. The formula is customized based on how business units want the costs to be calculated. For example, if a discount is available once the quantity attains a certain threshold, the formula would be able to calculate the costs after discounts are taken into consideration. Another extension Mr. Jiaqi Zhao is responsible for is [redacted]. [redacted] stands for file transfer protocol. This is an automation extension and it is responsible for transferring pdf and mailing list files related to a customer order to the FTP, and generates a JSON file in order to be used in the Switch software to retrieve corresponding files. Furthermore, Mr. Jiaqi Zhao is responsible for the highly complicated processing for MAGNA IV's program for Pageflex called PostXml.vbs in PHP programming language. This is a vital element of MAGNA IV's complicated computer systems, and is a critical program as it is responsible for the back-up plan whenever the server runs slow or times out. When situations like these happen, the job order information will not be able to be pulled into the MIS system. The program has the functionality of loading information

from the website to the MIS system, when the order number is manually input into the program. To ensure the proper functioning of this critical component, Mr. Jiaqi Zhao in the position of Computer Programmer is directly responsible for Regexes for the Pageflex admin sites. The Regexes are written in JavaScript programming language and are used for limiting users' inputs. All Computer Programmers, including Mr. Jiaqi Zhao must have earned a bachelor's degree in Computer Science in order to effectively and efficiently carry out the programming duties related to the Pageflex admin system.

MAGNA IV also provide the printing of logos/designs on personalized products such as home decors, bags, and cups. [redacted] is a website which allows clients to order products online. Mr. Jiaqi Zhao, as an integral part of the Computer Programmer position, is critically responsible for developing the programs and extensions which have the functionality of automating the processing and completion of orders. Indeed, the Computer Programmer position is responsible for the creation and maintenance of a program called [redacted] which eliminates the manual process of inputting job order information from the website into our MIS System. The program also has the functionality of generating invoices and sending the invoices to customers. The name of our [redacted]. [redacted] is one of our most important systems, which not only manages all divisions' activities and supports all the employees, but also functions as a database for company data. Mr. Jiaqi Zhao's job, as Computer Programmer, includes the highly sophisticated and complicated duties of updating and expanding of the [redacted] for errors and correcting all errors that occur as quickly and efficiently as possible. Moreover, his position is responsible for managing the [redacted] system and ensuring the proper performance of the database. As System Administrator, it is my professional opinion that the [redacted] and the [redacted] system are very complex and sophisticated, because of their comprehensive structures as in the 4 different languages involved in the program (PHP, JavaScript, HTML, and C#), in the complexity of new functions which need to be added to the program constantly, in the scope of the activities the system manages, and in the different types of queries needed for the database etc. Without the obtainment of a bachelor's degree in Computer science, it is not possible to train a worker to have the necessary critical, theoretical and practical application of the related concepts and knowledge for the programming skills required for program writing, updating, expanding, and testing etc. Further, MAGNA IV provides software products to clients as well. As part of the Computer Programming position duties, Mr. Jiaqi Zhao is directly responsible for creating the software products designed for clients, based upon the clients' specifications. It is my expert opinion, that it is not possible for an employee in the Computer Programmer position to properly perform these duties without the obtainment of a bachelor's degree in Computer Science, as one must have a highly sophisticated understanding of a theoretical and practical application of Computer Science to critically and creatively create such programs based upon the requirements provided by the client.

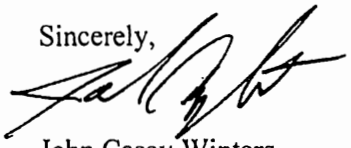
In the Computer Programmer Position, Mr. Jiaqi Zhao is also directly responsible for developing highly sophisticated websites with the specific purpose of simplifying highly complicated the business processes. These websites are critical for the mission of MAGNA IV, as these websites assist other employees in their job duties, and are convenient to use. The

websites are developed with various programming languages, including, but not limited to, C#, PHP, and JavaScript. Without the obtainment of a bachelor's degree in Computer Science it is not possible for an employee in the position of Computer Programmer to effectively and efficiently create these highly sophisticated and critical programs to allow the entire team at MAGNA IV to carry out its business objectives.

The corresponding knowledge can only be acquired from a series of Computer Science courses in specific topics, which is the course setting that a bachelor's degree in Computer Science offers. After reading through Mr. Jiaqi Zhao's bachelor's degree transcript, it is my expert opinion that the specific Computer Science topics required to perform the complicated duties for the job are manifest in Mr. Jiaqi Zhao's Computer Science Degree. The concepts and knowledge he learned from his degree are absolutely critical and necessary for understanding our software, servers, and systems, etc.

It is also for these reasons that Mr. Jiaqi Zhao is highly qualified for this position. During his completion of the Bachelor's Degree in Computer Science, Mr. Jiaqi Zhao has acquired various programming knowledge in languages such as JavaScript, PHP, HTML and in object-oriented programming. When taking Master Level "Web Technology" class, Mr. Jiaqi Zhao developed a website with PHP and Javascript, which are two essential technical skills which the proffered Computer Programmer position needs to have. Mr. Jiaqi Zhao also completed software development projects with object-oriented programming in Java, C++, SQL and other programming languages while earning his Bachelor's Degree. However, proficient programming skills are not the only knowledge Mr. Jiaqi Zhao learned from his Bachelor's Degree. Mr. Jiaqi Zhao also acquired important team working, communication, data modeling, query developing, database building and other professional skills from his degree. Such skills are an integral function of earning a Bachelor's Degree in Computer Science and again bolster the claim that the position is a specialty occupation requiring the obtainment of a Bachelor's Degree in Computer Science as a minimum requirement for entry into the position.

Sincerely,



John Casey Winters

Customer Service Manager / System Administrator

JOHN CASEY WINTERS

[redacted]

OBJECTIVE: To obtain a position that would allow me to utilize my technical writing skills, my information technology knowledge along with my organizational and people skills to grow as a professional.

EMPLOYMENT: September 2016 – Present
Magna IV Communications, Little Rock, Arkansas
Customer Service Manager
Responsibilities:

- Facilitate the communication with customers and advise the best materials and procedures to ensure the production of the highest quality
- Manage eight (8) Customer Service Representatives
- Establish Standardized Operating Procedures to ensure excellent Customer Service
- Work with Production Team to facilitate the successful production of customer orders
- Develop and maintain cost center standards
- Research and report job profitability issues and take corrective action

EMPLOYMENT: September 2010 – Present
Magna IV Communications, Little Rock, Arkansas
Systems Administrator
Responsibilities:

- Coordinate the maintenance, purchase, support and installation of computer hardware and software to assure system information availability and integrity
- Assist users in learning and using software and hardware. Determine training needs and develop education programs and support users with technical advice and problem resolution
- Perform troubleshooting procedures to isolate and diagnose network, system, hardware and software problems
- Perform preventative maintenance and install upgrades on hardware and software; and coordinate the movement of computer equipment
- Responsible for constructing, configuring and installing servers
- Maintain e-mail server and e-mail accounts, maintain FTP server and accounts
- Perform preventative and scheduled maintenance of internal servers
- Maintain and troubleshoot problems with computer peripherals
- Develop and administer a system for log-on and database security and integrity
- Maintain daily and interval systems and database backups which includes controlling copies of data and programs stored off-site
- Develop a Data Security Policy in accordance with customer requirements and industry standards

- Develop Crystal Reports to meet the information needs of department managers
- Work with the COO to analyze accounting and production metrics as well as integrate systems and streamline operating efficiencies
- Develop SQL Server database maintenance plans, manage SQL logins and user rights, review SQL Server Logs to ensure server performance and database optimization

September 1993 – September 2010
Magna IV Communications, Little Rock, Arkansas
Cost Estimator/Customer Service Representative/Production Assistant
Responsibilities:

- Determine the most efficient production plan, compile material costs, estimate production and labor costs based on previous jobs and plant standards
- Coordinate production of jobs
- Manage customer paper inventory and finished goods inventory in our warehouse
- Answer customer questions and advise most efficient job design
- Implement the estimating module of the Logic management system
- Strive to meet targeted profit margin with cost estimating
- Manage customer paper inventory and finished goods inventory in our warehouse

February 1992 – August 1993
[redacted], Little Rock, Arkansas
Administrative Assistant
Responsibilities:

- Planned and scheduled daily production
- Assisted customers with professional printing advice
- Purchased materials for production
- Oversaw delivery of completed jobs

February 1988 – September 1991
[redacted], Ashdown, Arkansas
Assistant to Vice President of Operations
Responsibilities:

- Provided application review and initial underwriting opinions
- Administered automobile, building and worker's compensation coverage for 17 multi-location subsidiary companies
- Verified property tax and casualty insurance compliance on a 10.3 million dollar mortgage loan portfolio
- Compiled, for Company Actuary, policyholder information to develop new policies

September 1986 – January 1988
[redacted] Texarkana, Texas
District Supervisor/Store Manager
Responsibilities:

- Supervised the management of eight convenience stores
- Verified daily bank deposits and conducted monthly cash audits
- Analyzed grocery and gasoline sales to develop sales strategies

SKILLS: Microsoft SQL Server Management Studio, Microsoft Word, Excel, Access, Outlook, Crystal Reports 2011, Microsoft Active Directory, Microsoft Terminal Services Manager, Windows Server Backup, Adobe Creative Suite, XML, Sage Abra Suite, VIPRE Email Security, VIPRE Business Premium Antivirus,

EDUCATION: **Bachelor of Science in Business Administration, General Business Management**
University of Arkansas School of Business, Fayetteville, Arkansas 1986
Microsoft Certificate of Achievement
Querying Data with Transact-SQL April 2014
Microsoft Certificate of Achievement
Fundamentals of Querying Microsoft SQL Server May 2015



Chonghui Li

Computer Scientist

[redacted]

September 12, 2018

To: U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St.
St. Albans, VT 05479

Dear USCIS Officer,

My name is Chonghui Li and I am a Computer Scientist at Adobe Systems, Inc. I am submitting this expert letter to clarify and provide expert testimony proving that the position of Computer Programmer offered by MAGNA IV Color Imaging, Inc. (Magna IV) is a specialty occupation requiring a Bachelor's Degree in the specific specialty of Computer Science, or closely related field, such as Mathematics or Software Engineering. Indeed, based upon my expert opinion, the overwhelming vast majority of Computer Programmer positions which require the ability to develop complex computer programs such as Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development with experience and an understanding of HTML, CSS, Javascript, C#, SQL, .Net, PHP, and Object oriented programing require a Bachelor's Degree in Computer Science, and as such, a Bachelor's Degree is normally required for such a position.

This opinion letter is written based on my experiences as a Computer Scientist. I have been working successfully in software development for about 20 years. The positions I worked on include Software Designer, Software Developer, Computer Scientist, Software QE Developer, Senior QA Automation, and Senior Software Engineer. I am experienced in designing, developing, and enhancing software in infrastructure management, network management, engineering, scientific, telecommunication, financial, insurance, digital publishes and IT inventory etc. I support developments for iOS, Android, and desktop applications. I develop web sites and work with web servers.

Computer Science is a dynamic and ever changing field. Every day, new software is developed; new research in different fields is completed; new technology ideas are generated etc. The coursework involved in earning a Bachelor's Degree in Computer Science not only provides students with the technical and professional abilities which are important for them at work, but also trains students to be able to adapt to the fast developing Computer Science world, and always be capable of performing the duties in IT-related jobs. When earning a Computer Science degree, students must master not only proficiency in a programming language, but the theoretical

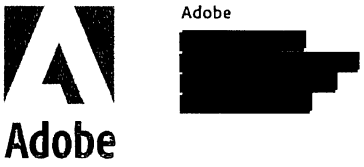


and technical underpinnings that make the programming language possible, knowing the various exploits of the programming language, and most importantly, how to theoretically solve incompatibility issues between programming languages across a multitude of platforms and operating systems. The knowledge acquired in a minimum of Bachelor's Degree in Computer Science is irreplaceable with any lower level education, because of the fact that it prepares the students so well in adapting to the development of Computer Science field.

As a Computer Scientist who has years of experiences in programming, I believe that one must obtain a Bachelor's Degree Computer Science fields in order to obtain a well understanding of various programming languages in object-oriented development and design, to gain professional analytical skills and critical thinking skills, to have knowledge in developing software cross-platforms, to attain statistical analysis, mathematics background and algorithm development skills. Looking into Mr. Jiaqi Zhao's transcript, the topics covered in his Bachelor's Degree are indispensable for him to be able to perform his job duties as a Computer Programmer. In general, he took courses related to programming, data structures, algorithms, web technology, mobile applications development, and database systems etc. From my experiences, those topics cover essential knowledge which a qualified Computer Programmer should have.

Indeed, as stated in the *Occupational Outlook Handbook* (OOH), the majority of Computer Programmer positions require a Bachelor's Degree in Computer Science, which comports with the highly sophisticated theoretical and practical application of a body of highly specialized knowledge, vis-à-vis the obtainment of a Computer Science Bachelor's Degree. As an expert in the field, I can further state that it is exceedingly rare in the current climate of Computer Programmer position requirements that a company will hire a Computer Programmer without a Bachelor's Degree in Computer Science, or a related field such as Mathematics or Software Engineering. In keeping with the ever evolving nature of the duties required by Computer Programming positions, the ability to perform the duties required by the position require a vast understanding of how all computer programs work, and how they are interrelated. A mere understanding of a select few programming languages is no longer sufficient in the current climate of advanced computer programming. As such, it is clear why the OOH states that the typical entry-level education required for the position of Computer Programmer is a Bachelor's Degree, since the sophisticated and highly theoretical knowledge in Computer Science is a modern day requirement to effectively perform the skills and responsibilities needed in a Computer Programmer position. This current state of affairs is confirmed by the O*NET Online which states that eighty-eight percent (88%) of Computer Programmers require a Bachelor's Degree as the educational level required to fill the position. As such, in my expert opinion, it is clear that a Bachelor's Degree or higher in the specific specialty of Computer Science, Mathematics, or closely related specialty field is the absolute norm, and exceedingly common to the industry and required for entry level positions.

In addition to the industry standard of requiring a Bachelor's Degree in Computer Science, the particular position of Computer Programmer offered by Magna IV, according to

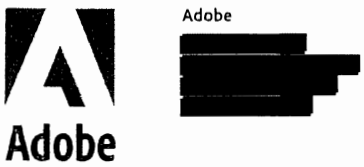


MAGNA IV Color Imaging, Inc.'s Job Duties Description pertaining to the Computer Programmer, further demonstrates that a minimum of a Bachelor's Degree in Computer Science is required in order to perform the highly detailed and sophisticated responsibilities and duties of the position. For instance, the position of Computer Programmer at Magna IV is directly responsible for the development of Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development. The position also requires the ability to write Crystal Reports and add functionality to the [redacted] in addition to writing scripts for [redacted] for changing or improving workflow.

Personally, I have very similar experiences comparing to the preceding job duties. When I was working at Guidewire Software Inc. as Senior QA Automation, I solved long term issues in Web UI. My job duties are: 1) Independently created a tool to measure the PCF (page configuration file in XML format) coverage by using Java; 2) Shortened the cycle from release -> bug report -> fix by creating a test app to fully use current apps and do the regression testing as release acceptance testing. So the most issues can be caught and fixed before the release, which made the app teams' development move more smoothly. The tool also helped Web UI upgrade on third party software and schema changes. 3) Created a tool to monitor marked KnownBreak test cases in order to measure the quality between releases; 4) Added complicated test cases in configuration and automations and saw they catch the bugs effectively; 5) converted manual testing to automation testing. Those duties are similar to what Mr. Jiaqi Zhao, in the Computer Programmer Position performs, specifically as it relates to the development of Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development. In my opinion, the duties require a complete understanding of programming and web technology related knowledge, which means, professional training from that can only be obtained by earning a Bachelor's Degree in Computer Science.

Additionally, the duties of the position of Computer Programmer at Magna IV require the following duties and skill sets:

- Manage Mindfire Campaigns in building html pages for cross-media projects;
- Assist in developing, supporting and extending web storefronts power by Pageflex, PrestaShop and Wordpress;
- Build Studio templates for customizable or static items and general site maintenance;
- Site skinning, report building and database implementation;
- Collaborate with departments to streamline the workflow between systems;
- Interact with other personnel in solving complex business and technical problems;
- Work with scratch coding in PHP, MySQL;



- Work with projects involving Angularjs, nodejs, mongodb, C#, Javascript, and SQL; and
- Work with terminal and Linux servers.

As an experienced personnel in Computer Science area, I am able to conclude from the aforementioned general description of job duties that the Computer Programmer at Magna IV is a comprehensive position, which requires a clear understanding of various Computer Science related knowledge in specific fields, requiring the obtainment of a Bachelor's Degree in Computer Science. For example, the fields include web, database, programming, and server. I have experiences in building automation test environment for testing product of Network Discovery and Desktop Inventory from both backend and User Interfaces by using Ant(and Antx), Junit, HttpUnit, jWebUnit, XML, PHP, Perl, Java, Servlet, JSP, Tomcat/Apache, Servlet, MySQL, PHP, JavaScript and TestPartner; I have experiences in building web pages by using HTTP, HTML, XML, JavaScript, PHP, Perl and CSS; I have experiences in databases such as Oracle, PostgreSql, MySQL, and SQLite. Based on my own experiences, I am confident to state that the Computer Programmer position at Magna IV is complex and unique and certainly meets the definition of a specialty occupation requiring the obtainment of a Bachelor's Degree in Computer Science. Deep knowledge from systematic course setting is very important. As far as I see from Mr. Jiaqi Zhao's transcript and the job duties, the course setting of Mr. Jiaqi Zhao's Bachelor's Degree program closely matches the job duties he perform as Computer Programmer at Magna IV. Therefore, the Bachelor's Degree in Computer Science is necessary for the proffered Computer Programmer position.

The programming languages and developing tools that I have experience in include Java, C/C++, Python, JavaScript, SQL, PHP , Shell Script, XML, HTML, CSS, Jnuit, TestNG, Selenium, JSP, Tomcat/Apache, gradle, groovey, Boost Unit Test Framework, ActionScript3, Gosu, GNU toolchain, xcode3, Perforce, git, Video analyzing tools, Apache ZooKeeper, RESTful APIs, Maven, jenkins, Teamcity, Visual Studio, Eclipse, IntelliJ, JSON, YAML, and amazonaws SDK for java and python. It is my further opinion as an experienced programmer who has skills in various programming languages and developing tools that skills of programming languages are essential for Computer Programmers, and further that the training offered by a Bachelor's Degree of Computer Science program is critically important and an absolute prerequisite to performing the duties of Computer Programmer at Magna IV. Indeed, being a knowledgeable Computer Programmer not only requires related skills in programming languages and tools, but also requires fast learning skills with a theoretical and practical knowledge of many types of programming languages. Only through obtainment of a Bachelor's Degree in Computer Science, can an individual minimally perform the duties of the position.

Furthermore, when reviewing the knowledge based requirements of the position of Computer Programmer at MAGNA IV Color Imaging, Inc., it is clear that this position meets the requirements to be considered a specialty occupation. The position also requires the abilities of ensuring applications and programs meet the company's operational and strategic demands. The

Adobe [redacted]

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analytical and technical skills which are necessary to be capable of performing the tasks stated require the employee to have the theoretical knowledge that can only be obtained by earning a Bachelor's Degree in Computer Science. The well-rounded training which a Bachelor's Degree provides cannot be substituted by comparably lower level education or an incomplete degree. Instead, the job responsibilities need to be performed with the assistance of more advanced knowledge and with very little oversight. Without the obtainment of a Bachelor's Degree in Computer Science, it would be extraordinarily difficult for the individual filling the position of Computer Programmer at Magna IV to complete the tasks and duties of the position, without significant intervention and oversight by other Computer Programmers, whom have received a Bachelor's Degree in Computer Science.

In summary, it is my expert opinion that the Computer Programmer offered by Magna IV is clearly a specialty occupation requiring advanced knowledge and a highly sophisticated theoretical understanding of advanced computer programming skills, vis-à-vis the obtainment of a Bachelor's Degree in Computer Science. The knowledge which is utilized in this position is a theoretical and practical application of what Mr. Jiaqi Zhao has acquired in his Bachelor of Science Degree from University of Central Arkansas.

Sincerely,

Chonghui Li

Chonghui Li

Computer Scientist

Chonghui Li
[redacted]

Summary:

- Proficient in Java and C++ technology. Skilled in Object-oriented development and design
- Proficient in creating automation test frameworks.
- Excellent analytical skill and critical thinking
- Skilled in amazonaws SDK programming on EC2 instance and S3 storgae
- Familiar with Video transcoding, thumbnailing and fingerprinting
- Solid experience in developing software cross-platforms: Solaris, AIX, HP-UX, MacOS X, Linux and Windows.
- Developed software in engineering, scientific, telecommunication, financial, insurance, digital publishes and IT inventory.
- Successful in managing tasks and groups across different time zones.
- Skilled at analyzing and discussing complex design challenges.
- Quick problem solver
- Strong statistic analysis, mathematics background and algorithm development skills
- Certificate of project management
- Master degree in Applied Computer Science
- Green card holder

Education: Master degrees in Applied Computer Science

Skills & Expertise:

Operating systems:

Unix, Linux, MacOS, Windows

OO Analysis and design: **Design Patterns**

Database: **Oracle, PostgreSql, MySQL, SQLite**

Programming languages and developing tools:

Java, C/C++, Python, JavaScript, SQL, PHP , Shell Script, XML, HTML, CSS, Jnuit, TestNG, Selenium, JSP, Tomcat/Apache, gradle, groovey, Boost Unit Test Framework, ActionScript3, Gosu, GNU toolchain, xcode3, Perforce, git, Video analyzing tools, Apache ZooKeeper, RESTful APIs, Maven, jenkins, Teamcity, Visual Studio, Eclipse, IntelliJ, JSON, YAML, amazonaws SDK for java and python

Professional Working Experience:

Computer Scientist at Adobe Systems, [redacted] September 2014 — Now
Working on Creative Cloud Video, Digital Media tools

Significantly improved the automation builds by reducing the rate of failures and build duration and increased build frequency.
Successfully improved stability of the service in an efficient way.
Being responsible for solving issues in service and its dependencies; preparing recipes of Splunk for the team.
Supports developments for iOS, Android and desktop applications and use deveice farms.
Independently designed and implemented tools for dev configuration, code static analysis, metaprojects, artifactory..
Support team members and track the issues with the third parties.

Senior Software Engineer at [redacted] October 2013 — September, 2014

Independently and successfully designed and implemented video transcoding java package and used in parsing issues with woodwing and folio formats from publishers and generating output files for different scales.
Improved down -sampling images in PDF and solved problems in original PDF displays on different mobile devices. Adobe PDFL and callas libraries were used. The implementation is in C++ and Java.
Creatively and independently built a tool to do ingestions for all issues which have been ingested in earlier versions, including rendition, hand-off to AWS storage and push to store front. It helped uncover many problems. The tool also made QA automation happen.
Successfully built a utility for comparing parser output files from different runs. It helps developers and qa to catch issues automatically.
Worked on parsing overlays and metadata..

Software QE developer [redacted] **May 2012 — October 2013**
Creatively and successfully developed test framework for Adobe Creative Cloud Video Worker: 1) Ran different video formats configurable; 2) Caught all the issues in the test framework before release to the product. 3) Built asset management tool. 4) Developed transcoding and thumbnailing tools and integrated existing free tools into the test framework. 5) Used both C++ Unit test and Junit test for taking the most advantages for the test objectives. 6) Developed test scenarios for getting files from local desk, from local file server or from aws s3 storage. 7) Prepared test cases prior to the completion of the feature. Once dev completes the implementation, the full coverage testing is ready immediately. The test framework brought the significant benefits to the dev. Skills: Java, C++, Junit, Video analyzing tools, design patterns, maven, splunk, amazonaws SDK, MongoDB, Adobe Creative Cloud.

Creatively and successfully improved test framework for [redacted] project. [redacted] provides services for creation of Video Thumbnails, Distributed Video/Audio Transcoding, and fingerprinting. My major improvement includes 1) At test framework level, made test to run in multithread mode. 2) Converted existing test cases to send request, get response and verify outputs and response asynchronously. 3) Added AWS S3 storage support; 4) created effective test cases to increase the coverage and find the issues in the earlier stage. 5) Added test framework and test cases for test auto scaling up and scaling down on AWS EC2 instances based on the customized rules. 6) Investigated the root courses of issues which were not reproducible. 7) Written tool to monitor the resource usage in worker machines. 8) Created library in C++ for output video verification. 9) Solved issues related automation tests. With the improvement, the quality of the product was improved. The Skills include ZooKeeper, AWS SDK for Python, python, C++, Video analyzing tools, design patterns, splunk.

Senior QA Automation, [redacted] **May 2011 — May 2012**
Bettered the QA practice and solved long term issues in Web UI: 1) Independently created a tool to measure the PCF(page configuration file in XML format) coverage by using Java; 2) Shortened the cycle from release -> bug report -> fix by creating a test app to fully use current apps and do the regression testing as release acceptance testing. So the most issues can be caught and fixed before the release, which made the app teams' development move more smoothly. The tool also helped Web UI upgrade on third party software and schema changes. 3) Created a tool to monitor marked KnownBreak test cases in order to measure the quality between releases; 4) Added complicated test cases in configuration and automations and saw they catch the bugs effectively; 5) converted manual testing to automation testing. Skills: Java, Selenium and design patterns.

Software QE developer in [redacted] **Feburary 2007 — May 2011**
Creatively and independently developed test applications for testing reading and writing XML, FLA and SWF files either compressed or uncompressed by testing **unlimited** scenarios. Over 90% of bugs were found by the test applications. The test applications brought the new conceptions in

developing test applications: 1) all possible scenarios must be tested, which included all possible values of types in the ranges, values out of the range, values with wrong types; all combinations of valid API calls in the context; all combinations of invalid APIs calls in context, validate the outputs(values and call sequence) from each calls; 2) Very easy and fast to extend the test app or test new APIs; 3) Less maintenance; 4) From the test results, it is very easy for QE and DEV to identify where the bugs are; 5) No baselines are needed. The high productivities of the test applications were well-recognized and it provided solution to less people doing more things. Main skills: C/C++, design patterns, STL, XML parser, zlib, XML spy, ActionScript3, FXG, FLA and SWF file structures.

Successfully created white box test framework based on the real QE daily activities and focuses for bringing higher productivities to other teams. Main skills: C/C++, STL, XML, design patterns.

Effectively lead team members to accomplish complex tasks. I supported two remote team members and kept them high productivities by showing expectations, bringing interests, seeing the values of their contributions and solved all tech issues they had or they might had. Main skills: Project management, C++ and product knowledge.

Leveraged test portal development. Main contributions: Test portal was needed; introduced database (rather than XML files) to be widely used in test portal; Introduced Apache Ant as solutions to the key issues; engaged in the first phase design and development. Main skills: Java, design patterns, ActionScript3, Python, Ant and task manager, MySQL.

Independently and successfully developed perforce file access summary report from raw data in perforce log to web based reports with user selected criteria. Main skills: C++/C++, design pattern, Apache, Oracle, Java and PHP.

Computer Scientist in [redacted] **April 2005— Feburary 2007**
Independently designed and developed performance test on AIX and Solaris and reported found issues; efficiently investigated crashes in PDFL on HP-UX and AIX, reported bugs with recommended solutions; efficiently identified and solved issues in test utilities, Potluck, PDFLChef and mini-PDFLChef; ported PDFLChef to AIX and HP-UX successfully; efficiently set test environment and built test cases to found issues in PDF library and then isolated the issues; made XTG test run on AIX 5.3(it is designed for AIX 5.1); worked with other teams on performance test fruitfully; improved automation tests; developed automation test environment to let QE have more time in bug investigation; engaged in test portal development to let both QE and dev communication on the same page and exchange test and investigation results across platforms and geographical locations; developed environment and web site to monitor PDF library performance and create dynamic reports by any user selected criteria; created test cases for PDFLChef; improved Potluck for catch stack traces on all platforms and dealt with issues on multithreads; integrated PDFLChef into Acrobat automation test environment; maintained PDFLChef in daily bases and solved any raised issues on time.

Software developer in [redacted] **06/2001— 04/2005**
Independently designed and developed UNIX (Solaris, AIX, HP-UX), Linux and MacOS scanners for collecting in depth hardware, software and system information and generating XML file for infrastructure management. Main skills used are OO, C++, STL, Java, XML parser, iMake, Python.

- Each scanner solved all the special platform-dependant problems to meet the requirement of the clients in a very short time.
- Successfully developed stream handle to load and store detected hardware, software and system information to/from files in different format(.xml.gz and .fsf), or to refill from previous scan result.
- Made much more data available and much more efficient to scanners on defferent data.

Built automation test environment for testing product of Network Discovery and Desktop Inventory from both backend and User Interfaces by using Ant(and Antx), Junit, HttpUnit, jWebUnit, XML, PHP, Perl, Java, Servlet, JSP, Tomcat/Apache, Servlet, MySQL, PHP, JavaScript and TestPartner.
Built web pages by using HTTP, HTML, XML, JavaScript, PHP, Perl and CSS Apache/Tomact.

Software designer [redacted] **2000 — 2001**

Designed, developed and enhanced uEMS product, a network management software. Main skills used are C++, SNMP, ATM, DSL, HP-OpenView and UNIX shell scripts.

- Successfully integrated uEMS device adapter development environment and runtime environment with Preside NSP(Network Service Platform) and third party applications(including orbix trader, Web server, Rouge Wave, GNU tools, Netscape Directory Server, aCC compiler), which resulted in software development, integration and testing meeting the deadline.
- Developed device adapter component, a bridge between uEMS and Preside world, which makes information available for Preside from uEMS.
- Creatively designed and implemented move tool with good quality. This tool is used by Internet Service Providers to clone all the service in one shelf to another and provide the same service in the new shelf.
- Enhanced and maintained uEMS core(including uEMS monitoring, mapping, provision and maintenance).

Department of Computer Science UNIVERSITY OF CENTRAL ARKANSAS

8/29/2018

[redacted]

To: U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St.
St. Albans, VT 05479

Dear USCIS Officer,

My name is Dr. Mark Smith and I am a Senior Lecturer at the University of Central Arkansas I am submitting this expert letter to clarify and provide expert testimony proving that the position of Computer Programmer offered by MAGNA IV Color Imaging, Inc. (Magna IV) is a specialty occupation requiring a Bachelor's Degree in the specific specialty of Computer Science, or closely related field, such as Mathematics or Software Engineering. Indeed, based upon my expert opinion, the overwhelming vast majority of Computer Programmer positions which require the ability to develop complex computer programs such as Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development with experience and an understanding of HTML, CSS, Javascript, C#, SQL, .Net, PHP, and Object oriented programing require a Bachelor's Degree in Computer Science, and as such, a Bachelor's Degree is normally required for such a position.

This opinion letter is written based on my experiences as a Senior Lecturer. I have a total of 38 years of experience in the Computer Science field and worked in a variety of industries such as Aerospace, Robotics, Electronic Manufacturing, RF Equipment, and Data Processing. I have been a lecturer at the University of Central Arkansas for almost 19 years where I have taught a variety of undergraduate and graduate level courses. My teaching interests involve Web Technology, Programming Mobile Devices using iOS, Object Oriented Programming using C++, and Java. Since 2000, I have been teaching multiple courses at University of Central Arkansas including CSCI 1470 Computer Science I, CSCI 1480 Computer Science II, CSCI 3381 Object Oriented Software Development Using Java, CSCI 4490 Software Engineering, CSCI 4357 Mobile Programming, and CSCI 4365 Web Technology. I have conducted a variety of undergraduate as well as graduate student research projects resulting in over 25 publications in peer review venues. Being an academic advisor at University of Central Arkansas, I provide career recommendation, guidance and assistance to Junior and Senior students in our bachelor's degree program in Computer Science. Therefore, I have access to various sources of information related to job openings which require bachelor's degree in Computer Science. I am experienced in analyzing the skill set needed for certain positions in order to perform corresponding job duties. I recommend suitable positions to students, and vice versa.

Computer Science is a dynamic and ever changing field. Every day, new software is developed; new research in different fields is completed; new technology ideas are generated etc. The coursework involved in earning a Bachelor's Degree in Computer Science not only provides students with the technical and professional abilities which are important for them at work, but also trains students to be able to adapt to the fast developing Computer Science world, and





always be capable of performing the duties in IT-related jobs. When earning a Computer Science degree, students must master not only proficiency in a programming language, but the theoretical and technical underpinnings that make the programming language possible, knowing the various exploits of the programming language, and most importantly, how to theoretically solve incompatibility issues between programming languages across a multitude of platforms and operating systems. The knowledge acquired in a minimum of Bachelor's Degree in Computer Science is irreplaceable with any lower level education, because of the fact that it prepares the students so well in adapting to the development of Computer Science field.

I believe the proffered Computer Programmer position is complex or unique that it can be performed only by an individual with a bachelor's degree in Computer Science, or its equivalent. The main reasons are that the job duties Mr. Jiaqi Zhao perform are demanding, and the knowledge he has gained from his undergraduate courses is required to complete his work. Syllabuses for related courses are attached.

The Computer Programmer position at MAGNA IV Color Imaging, Inc. is a comprehensive programming related position which involves writing, updating, expanding, and testing of programs, managing database, developing software, developing Web sites, and writing extensions and crystal reports. The bachelor's degree program in Computer Science at University of Central Arkansas provides the knowledge needed for the aforementioned job duties.

Indeed, as stated in the *Occupational Outlook Handbook* (OOH), the majority of Computer Programmer positions require a Bachelor's Degree in Computer Science, which comports with the highly sophisticated theoretical and practical application of a body of highly specialized knowledge, vis-à-vis the obtainment of a Computer Science Bachelor's Degree. As an expert in the field, I can further state that it is exceedingly rare in the current climate of Computer Programmer position requirements that a company will hire a Computer Programmer without a Bachelor's Degree in Computer Science, or a related field such as Mathematics or Software Engineering. In keeping with the ever evolving nature of the duties required by Computer Programming positions, the ability to perform the duties required by the position require a vast understanding of how all computer programs work, and how they are interrelated. A mere understanding of a select few programming languages is no longer sufficient in the current climate of advanced computer programming. As such, it is clear why the OOH states that the typical entry-level education required for the position of Computer Programmer is a Bachelor's Degree, since the sophisticated and highly theoretical knowledge in computer science is a modern day requirement to effectively perform the skills and responsibilities needed in a Computer Programmer position. This current state of affairs is confirmed by the O*NET Online which states that eighty-eight percent (88%) of Computer Programmers require a Bachelor's



[redacted]

Degree as the educational level required to fill the position. As such, in my expert opinion, it is clear that a Bachelor's Degree or higher in the specific specialty of Computer Science, Mathematics, or closely related specialty field is the absolute norm, and exceedingly common to the industry and required for entry level positions.

In addition to the industry standard of requiring a Bachelor's Degree in Computer Science, the particular position of Computer Programmer offered by Magna IV, according to MAGNA IV Color Imaging, Inc.'s Job Duties Description pertaining to the Computer Programmer, further demonstrates that a minimum of a Bachelor's Degree in Computer Science is required in order to perform the highly detailed and sophisticated responsibilities and duties of the position. For instance, the position of Computer Programmer at Magna IV is directly responsible for the development of Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development. The position also requires the ability to write Crystal Reports and add functionality to the [redacted] in addition to writing scripts for Kodak's Rules-Based Automation for changing or improving workflow. Detailed analysis on essential job duties will be provided in further paragraphs.

I met Mr. Jiaqi Zhao in a CSCI 1480 Computer Science II class taught by myself in 2015. Computer Science II is one of the two first year Computer Science courses, which can build solid foundation for students' skills related to problem solving, programming using dynamic memory management, and the object-oriented programming paradigm. In this course, Mr. Jiaqi Zhao "analyzed basic computer programs and designed object-oriented solutions; identified the relationships between all objects using such concepts as containment and inheritance; implemented the design for the specific problem solution using the C++ programming language utilizing Graphics; created basic data structures; completed unit test and validated the implementation of the problem using a debugger." (CSCI 1480 Syllabus) A main tool Mr. Jiaqi Zhao utilized in this course is Visual Studio software, which is also an essential tool frequently used on his job. Mr. Jiaqi Zhao utilized Visual Studio to complete programming assignments such as developing games and programs. When Mr. Jiaqi Zhao is tasked to develop a program from scratch, to update, expand, or test a program for his Computer Programmer job, the preceding skills he has learned from Computer Science definitely assisted him in completing the tasks efficiently. For example, according to Mr. Jiaqi Zhao's job duty, he works with updating, expanding, and testing the LTD Auto program, a program that is written in PHP, JavaScript, HTML, and C# languages. When updating the program, Mr. Jiaqi Zhao needs to understand the problem based on user's needs, and provide object-oriented solutions. Based on my teaching experience in programming, C++ is very difficult to be fluent in, and students who are fluent in C++ usually find languages such as C# and Java easier. Therefore, our bachelor's degree program was designed to prepare students to be ready for all kinds of programming languages,





by leading them to start from a relatively hard language. Mr. Jiaqi Zhao completed the C++ as one of the best students in the class. At an early level of Mr. Jiaqi Zhao's bachelor's degree program in Computer Science, CSCI 1480 Computer Science II prepared Mr. Jiaqi Zhao well for his career as a Computer Programmer.

The second class Mr. Jiaqi Zhao took with me was CSCI 3381 Objected Oriented Software Development Using Java. The course goals of this class: "understand the fundamentals of object-oriented programming and be able to compare and contrast the differences between object-oriented and procedural programming; be able to describe the solution to a simple software requirement in terms of object-oriented analysis and design techniques; when given a problem specification, be able to apply the principles of encapsulation, inheritance, polymorphism and information hiding to design and implement a software solution using Java; understand and use exception and event handling in the design and implementation of object-oriented programs using Java; be able to utilize multi-threading in creating Java programs; be able to create Java programs for a client-server environment using available networking techniques and APIs; be proficient in the use of both the command line as well as an off-the-shelf Integrated Development Environment (IDE) to construct and debug a multi-class object-oriented application in Java; be able to design and construct a simple GUI consisting of buttons and text fields using an API such as Swing." (CSCI 3381 Syllabus) Even though the only programming language used in this class is Java, the concepts and ideas conveyed in this class is widely applicable for other programming languages. MAGNA IV Color Imaging, Inc. works with clients frequently, for it provides printing and marketing services. Mr. Jiaqi Zhao works closely with object-oriented programming, programming based on software requirements, designing and implementing software solutions, exception and event handling, client-server environment, command line, Integrated Development Environment (IDE), and Graphical User Interphase (GUI). Mr. Jiaqi Zhao utilizes the preceding knowledge from Objected Oriented Software Development Using Java course in working with e-commerce platform, programs, and servers etc. on his job. One example is that when Mr. Jiaqi Zhao works on creating, updating, and expanding extensions for one of their main e-commerce platforms Pageflex, he uses C# for object oriented programming. He programs based on requirements and problem specifications from user, troubleshoots platforms, manages platforms from both client side and server side. Command line and Integrated Development Environment (IDE) are used as tools when performing his job duties. He makes sure the platform functions efficiently based on users' needs. Therefore, the knowledge Mr. Jiaqi Zhao gained from CSCI 3381 Objected Oriented Software Development Using Java course is very beneficial for his Computer Programmer position at MAGNA IV Color Imaging, Inc.





One of the elective course Mr. Jiaqi Zhao took was CSCI 4357 Programming Mobile Devices, which was taught by myself. The course goals of this class: "Develop a wide range of completely functional mobile applications; Test the mobile application using the vendor supplied simulator; Test the mobile application on the actual device." (CSCI 4357 Syllabus) The programming language used in developing applications for mobile devices in this class is Swift. Mr. Jiaqi Zhao works on Swift programming for applications on his Computer Programmer position. An example I found on his job duties is the nutrition calculator designed for a client. According to Mr. Jiaqi Zhao's job duties, "Mr. Jiaqi Zhao started writing the program from scratch, and is in charge of updating and expanding the program. The program testing will be completed by Mr. Jiaqi Zhao after the development process is completed." The experience of developing mobile applications from the course definitely prepared Mr. Jiaqi Zhao in developing the nutrition calculator. One of the assignments in this classes was to develop a calculator application, which is similar to the nutrition calculator application; and Mr. Jiaqi Zhao practiced building lists of items in a music application developed in another assignment, which can help him in building the food list in the nutrition calculator. The course setting is close to real life programming for mobile devices, because students are given the requirements for the applications, and they go through the processes of developing, updating, expanding, and testing. The processes are very similar to Mr. Jiaqi Zhao's work processes for creating applications at MAGNA IV Color Imaging, Inc. Mr. Jiaqi Zhao made a good decision in choosing CSCI 4357 Programming Mobile Devices as one of the three elective courses required for our bachelor's degree program in Computer Science. With the adequate training gained from CSCI 4357 Programming Mobile Devices, Mr. Jiaqi Zhao would be able to perform the development of mobile applications based on his experiences in the course.

Another elective course Mr. Jiaqi Zhao took was CSCI 5365 Web Technology, which was taught by myself as well. Mr. Jiaqi Zhao took the graduate version of this course. Graduate version of courses typically have higher standards compared to the undergraduate version. Graduate version tends to be more rigorous on the requirements and the grading scales. The course goals of this class: "Be able to design/develop client-side web applications using HTML, Java Script, and Cascading Style Sheets; Properly design, implement, debug, and test server-side applications using Perl, PHP, Java Servlets, Java Server Pages, and Java Server Faces; Perform detailed analysis necessary to fully design, develop, and integrate all 3 tiers of web application – client, server, data; Utilize a wide variety of design, implementation, and debugging Integrated Development Environments in building client/server side web applications; Fully design data tier needed for supporting web application." (CSCI 5365 Syllabus) Mr. Jiaqi Zhao works with the development of Websites as the Computer Programmer at MAGNA IV Color Imaging, Inc. One





of the Websites developed by Mr. Jiaqi Zhao is the MAGNA IV Request for Estimate Form Website. The Web site is built with HTML and CSS. This Web site increases the efficiency of an important business process. It allows the electronical submission of information. Another Web sites developed by Mr. Jiaqi Zhao is the Website GSI Form. This Web site is developed in PHP, and is developed to assist a MySQL database. The Web site has the functionality of add new, search, edit, delete, print selectively, export to excel or csv selectively, and copy selectively. Mr. Jiaqi Zhao was trained to build e-commerce related Web sites in this class. He was required to work with MySQL database in assignments as well. After completing this class, he became fluent in Web Technology related languages such as PHP, CSS, HTML, and Java Script, and he understood how to create and use database in a Web site, which are all frequently used on his job as Computer Programmer. CSCI 5365 Web Technology provided Mr. Jiaqi Zhao the knowledge he needs to perform the Web related job duties.

Mr. Jiaqi Zhao also benefited from other courses in our bachelor's degree program in Computer Science. I provided detailed proof on how the completion of certain job duties require the knowledge gained from specific courses which Mr. Jiaqi Zhao took with me in the program. I am hereby analyzing in general how the completion of other example job duties required the knowledge gained from other courses in the bachelor's degree program in Computer Science. Being the prerequisite of CSCI 1480 Computer Science II, CSCI 1470 Computer Science I also help to build a solid foundation for students. The basic knowledge related to programming syntax and logic etc. prepare students well for their career. Mr. Jiaqi Zhao's Computer Programmer position utilizes the basic programming knowledge on a daily basis, because of the fact that programming is an important component of Mr. Jiaqi Zhao's job duties. Some courses in our program not necessarily teaches knowledge completely related to programming, software, web development, or database related, but teach students knowledge related to computer systems, career, hardware, computer organizations, and social aspects of Computer Science fields. These types of courses include CSCI 2440 Assembly language and Computer Organizations, CSCI 3190 Social Implications Technology, CSCI 3380 Computer Architectures, CSCI 4191 Seminar in Applied Computing, CSCI 4300 Operating Systems, and CSCI 3335 Networking. Computer Programmer Mr. Jiaqi Zhao needs the aforementioned courses in order to have a well understanding of computer systems, career, hardware, computer organizations, and social aspects of Computer Science fields. Mr. Jiaqi Zhao troubleshoots systems on his job, and works with servers and hardware. Mr. Jiaqi Zhao needs to know the computer systems and organizations to perform corresponding job duties. Some courses provide important knowledge for programming area, include CSCI 2320 Data Structures and CSCI 3330 Algorithms. Data Structures and Algorithms are the foundation of a lot of complicated programs. Both of the topics are essential





for a Computer Programmer to master. Mr. Jiaqi Zhao work with scratch coding on his job for difficult programs developed for the clients and internal usages. In this way, the topics related knowledge are indispensable. The CSCI 2320 Data Structures and CSCI 3330 Algorithms in our bachelor's degree program in Computer Science is difficult and demanding, but complex programming definitely needs a well understanding of Data Structures and Algorithms related knowledge. CSCI 3370 Principles of Programming Languages is helpful for Mr. Jiaqi Zhao in a way that it provides an overview of every common programming language, even some uncommon programming languages. Mr. Jiaqi Zhao works a lot with programs which involve multiple languages. The Capstone class in our program is CSCI 4490 Software Engineering. This course involves team work on very complex programming assignments. The course trains the students to be ready to work in demanding programming environment.

As not only demonstrated by the detailed job duties listed by MAGNA IV Color Imaging, Inc., but also evidenced in the professional level work that is being completed by the employee, Mr. Jiaqi Zhao, it is my expert opinion that a minimum of a Bachelor's Degree in Computer Science is necessary for this position. Specifically, the position offered by Magna IV requires advanced skills of the following languages: HTML, CSS, JavaScript, C#, SQL, .Net, PHP, and Object-oriented programming. Due to the every changing environment of programming languages and the need to write programs that are compatible for multiple platforms and functions, the Computer Programmer position requires the ability for the employee to program in many different programming languages. It is seldom the case that an employer, such as Magna IV, will have a need for a Computer Programmer position that is knowledgeable of a specific programming language or a small set of programming languages. Instead, given the rapidly changing landscape of computer programming, and the need learn new and ever changing computer programming languages, the position clearly requires the theoretical knowledge obtained by virtue of a Bachelor's Degree in Computer Science to adequately perform the position.

Furthermore, when reviewing the knowledge based requirements of the position of Computer Programmer at MAGNA IV Color Imaging, Inc., it is clear that this position meets the requirements to be considered a specialty occupation. The position also requires the abilities of ensuring applications and programs meet the company's operational and strategic demands. The analytical and technical skills which are necessary to be capable of performing the tasks stated require the employee to have the theoretical knowledge that can only be obtained by earning a Bachelor's Degree in computer science. The well-rounded training which a Bachelor's Degree provides cannot be substituted by comparably lower level education or an incomplete degree. Instead, the job responsibilities need to be performed with the assistance of more advanced knowledge and with very little oversight. Without the obtainment of a Bachelor's Degree in





Computer Science, it would be extraordinarily difficult for the individual filling the position of Computer Programmer at Magna IV to complete the tasks and duties of the position, without significant intervention and oversight by other Computer Programmers, whom have received a Bachelor's Degree in Computer Science.

In summary, it is my expert opinion that the Computer Programmer offered by Magna IV is clearly a specialty occupation requiring advanced knowledge and a highly sophisticated theoretical understanding of advanced computer programming skills, vis-à-vis the obtainment of a Bachelor's Degree in Computer Science. The knowledge which is utilized in this position is a theoretical and practical application of what Mr. Jiaqi Zhao has acquired in his Bachelor of Science Degree from University of Central Arkansas. In another words, the Computer Programmer position under consideration is an advanced position, and the requirement of a Bachelor's Degree in Computer Science is an absolute minimum requirement, as proven above.

Dr. Mark Smith, Ph.D.

Senior Lecturer

Department of Computer Science

College of Natural Sciences and Mathematics

University of Central Arkansas

MARK R. SMITH, PH. D.

Computer Science Department
University of Central Arkansas
Conway AR, USA

[redacted]
http://faculty.uca.edu/marks

A. EDUCATION

PH.D.	Electrical Engineering	Southern Methodist University	May 2008
MSEE	Electrical Engineering	Southern Methodist University	Dec 1987
BS	Engineering	Arkansas Tech University	May 1984

B. APPOINTMENTS

University of Central Arkansas	LECTURER May 2000 – Present	Full time

C. MEMBERSHIPS

IEEE Society (2001 - present)

D. HONORS AND AWARDS

Top Engineering Student Award, Convocation Ceremony, Arkansas Tech University 1984.
Top Freshman Chemistry Student Award, Convocation Ceremony, Arkansas Tech University, 1981

E. SERVICE ACTIVITIES

College research committee, Fall 2002 – Spring 2005
Acxiom-UCA collaboration, Fall 2011 - present
Department Curriculum committee member, Fall 2002 – present
College Curriculum committee member, Fall 2010 – present.
ABET assessment committee member, Fall 2003 – present
Graduate faculty member, Fall 2005 – present
University Assessment and Evaluation committee member, Fall 2011 - present

F. SELECTED PUBLICATIONS

1. **M. Smith,** , "Identification of Human Skin Regions Using Color and Texture," *Proc. of the IEEE 2011 International Conference on Information Technology, New Generation (ITNG'11)*, July, 2011.
2. **M. Smith,** "A Relevancy Classification System for Web Search Results in Mobile Devices," *Proc. of the IEEE 2011 International Conference on Information and Knowledge Engineering (IKE'11)*, April, 2011.
3. **M. Smith,** "Web Mining Applications for Mobile Devices," *Proc. of the IEEE 2010 International Conference on Information and Knowledge Engineering (IKE'10)*, July, 2010.
4. **M. Smith,** "Analysis of Sporting Events Using Softbots," *Proc. of the IEEE 2010 International Conference on Information Technology, New Generation (ITNG'10)*, April, 2010.

5. **M. Smith**, "Identification of Landscapes using Semantic Queries," *Proc. of the IEEE 2009 International Conference on Information and Knowledge Engineering (IKE'09)*, July, 2009.
6. **M. Smith**, "Classification of Movies and Televisions using Motion," submitted to *Proc. of the IEEE 2009 International Conference on Information Technology, New Generation (ITNG'09)*, to be held April, 2009.
7. **M. Smith** and A. Khotanzad, "Video Data Mining Techniques Applied To Scene Analysis," *Proc. of the IEEE 2008 International Conference on Information and Knowledge Engineering (IKE'08)*, July 2008.
8. **M. Smith** and A. Khotanzad, "An Efficient Indexing and Storage Algorithm for Visual Databases," *Proc. of the IEEE 2008 International Conference on Information Technology, New Generation (ITNG'08),* April, 2008.
9. **M. Smith** and A. Khotanzad, "Video Analysis using Region Validation," *IEEE 2008 Southwest Symposium on Image Analysis (SSIA '08)*, March, 2008.
10. **M. Smith** and A. Khotanzad, "Visual Data Mining of Faces using Color and Texture," *Proc. of the IEEE 2007 International Conference on Information and Knowledge Engineering (IKE'07),* June, 2007.
11. **M. Smith** and A. Khotanzad, "Quality Metrics for Object-Based Data Mining Applications," *Proc. of the IEEE 2007 International Conference on Information Technology, New Generation (ITNG 2007)*, April, 2007.
12. **M. Smith** and A. Khotanzad, "Video Segmentation Utilized in Visual Data Mining Applications," *Proc. Of the IEEE 2006 International Conference on Information and Knowledge Engineering (IKE'06),* June, 2006.
13. **M. Smith** and A. Khotanzad, "Unsupervised Object-Based Video Segmentation using Color and Texture Features," *Proc. of the IEEE 2006 Southwest Symposium on Image Analysis (SSIA '06)*, March, 2006.
14. **M. Smith** and A. Khotanzad, "Consistent Image Segmentation Applied to Visual Data Mining," *Proc. of the IEEE 2005 International Conference on Data Mining (DMIN '05)*, June, 2005.
15. **M. Smith** and A. Khotanzad, "XML Representation of Digital Videos for Visual Data Mining Applications," *Proc. of the IEEE 2005 International Conference on Informational Technology (ITCC'05),* April, 2005.
16. **M. Smith** and A. Khotanzad, "An Object Based Approach for Digital Video Retrieval," *Proc. of IEEE 2004 International Conference on Informational Technology (ITCC'04)*, April, 2004.
17. **M. Smith** and A. Khotanzad, "Unsupervised Object-Based Detection of Dissolves in Video Sequences," *Proc. of the IEEE 2004 Southwest Symposium on Image Analysis (SSIA),* March, 2004.

G. PROFESSIONAL DEVELOPMENT ACTIVITIES

Conducted MSIT Workshop Session, *iPhone App Development*, 2012

University of Maryland University College
The Graduate School
Cybersecurity & Information Assurance Department

United States Department of Homeland Security
Citizenship & Immigration Services

September 17, 2018

Re: Academic Degree Requirements for the position of Computer Programmer for Magna IV Color Imaging, Inc. and classification of the position as a USCIS Specialty Occupation.

To Whom It May Concern:

I have been asked to evaluate the academic degree requirements expected for the professional position of Computer Programmer for Magna IV Color Imaging, Inc.

Regarding my educational background and qualifications, I have received a Bachelor of Science in Finance from Touro College, a Master of Science in Internal Auditing and Management from City University, a Master of Science in Information and Telecommunication Systems for Business from Johns Hopkins University, as well as a Ph.D. in Management, Information Systems and Electronic Commerce from City University. I have over thirty years of work, consulting, and research experience in the field of information systems development, including technology project implementations for Fortune 1000 companies and international corporations. I have also served as Research Assistant Professor of Computer Science at Johns Hopkins University among other appointments. My leadership and technology research has been well supported. My research in information technology, computer science, information systems, cloud computing, data science, and other areas has been supported by grants from the United States Department of Defense, the US-Israel Science and Technology Foundation, and other organizations. My opinions have been accepted as authoritative in numerous instances, including serving as a consultant and/or research collaborator for: Microsoft Corporation, Lucent Technologies, L3 Technologies, TATA Interactive Group, Boeing Corporation, and other leading technology firms, as well as for corporations such as Bank of America and Bank of China, and for the National Security Agency, the Department of Defense, and the Department of Homeland Security. Since 2013, I have served in the role of Senior Technical Auditor at T. Rowe Price, in which I serve an authority on the cybersecurity needs for the company. Additionally, my opinions regarding employment position requirements and industry standards have been accepted by United States Citizen and Immigration Services (USCIS) in hundreds of instances. I have published numerous journal articles, conference proceedings, technical reports, editorials, a book and book chapter as well as presented talks on information security, information technology, and related topics. Also, I have served on the Editorial Boards for several professional journals, as well as on the Program Committees for numerous professional conferences. My current research interests include: advanced software engineering, emerging technologies, business intelligence, cybersecurity, cloud computing and related areas.

Currently, I am a Senior Technical Auditor for T. Rowe Price providing subject matter expertise services in cybersecurity to various departments within the organization. I also serve as

[redacted]

a Full Adjunct Professor of Cyber Security at the University of Maryland-University College. I teach the final capstone course involving a unique simulation and modeling component in the Master of Science in Cyber Security Program. In the past, I have taught graduate and undergraduate courses in Internet Applications, Management Information Systems, and related subjects. Our university offers Bachelor's degree programs in different areas of Information Technology as well as a Master of Business Administration (M.B.A.) degree program, the requirements for which I am thoroughly familiar with as a member of the university faculty. I have had the opportunity over the years to become familiar with the qualifications required to attain the position of Computer Programmer and similar professional positions, and the specialized and unique needs of the companies that recruit graduates for this position. For these reasons, I am eminently qualified to render the following professional opinion.

Computer Programmer as a Specialty Occupation

Established in 1975 and located in Little Rock, Arkansas, Magna IV Color Imaging, Inc. is a printing and graphic design firm. Specifically, Magna IV Color Imaging, Inc. offers services related to large format printing, direct mailing and fulfillment, graphic design, web to print, cross media marketing, and promotional services. Currently, Magna IV Color Imaging, Inc. requires the services of a Computer Programmer to perform various specialized duties that will help ensure the company's continued success as it expands. It is apparent that a Computer Programmer with the specific duties listed below would be considered a professional position and would normally be filled by a graduate with a minimum of a Bachelor's Degree in Computer Science, or a related area, or the equivalent. Such a requirement is necessary in that a college graduate obtains specific knowledge for the complex responsibilities of this position during a college program leading to such a degree. Completion of a Bachelor's Degree program in Computer Science, or a related area provides the student with specialized knowledge that directly prepares the graduate for the challenging tasks of the position. Specifically, the Computer Programmer for Magna IV Color Imaging, Inc. will be required to:

- Manage Mindfire Campaigns in building HTML pages for cross-media projects;
- Assist in developing, supporting and extending web storefronts power by Pageflex, PrestaShop and Wordpress;
- Build Studio templates for customizable or static items and general site maintenance;
- Perform site skinning, report building and database implementation;
- Collaborate with departments to streamline the workflow between systems;
- Interact with other personnel in solving complex business and technical problems;
- Work with scratch coding in PHP and MySQL;
- Work with projects involving Angularjs, nodejs, mongodb, C#, Javascript, and SQL; and
- Work with terminal and Linux servers.

When evaluating the minimum degree requirement for a certain employment position, the nature of the specific responsibilities must be closely examined along with the position title to ascertain the true nature of the academic requirements. After examining the responsibilities of

the Computer Programmer position in detail, it is apparent that a minimum of a Bachelor's Degree in Computer Science, or a related area, or the equivalent provides the student with the core competencies and skills needed for a Computer Programmer position with the responsibilities listed above. This is because the nature of these specific responsibilities and knowledge is so specialized and complex that knowledge required to perform these duties is usually gained through the attainment of a Bachelor's Degree in this field. A student completing a Bachelor's Degree in Computer Science, or a related area studies and obtains knowledge of the various theories and methods that are necessary for performing these daily tasks of a Computer Programmer for Magna IV Color Imaging, Inc. Courses required by a Computer Science, or a related major, such as those in Computer Programming, Data Structures, Principles of Programming Languages, Software Engineering, Data Processing, Operating Systems, Algorithms, Systems Programming, IT Project Management, and Fundamentals of Systems Development directly correspond to and prepare the student for the specific responsibilities of the position. The student completing such a degree is also required to demonstrate, through rigorous testing and challenging case studies, knowledge of various theories and methods that are necessary to perform these tasks. Furthermore, this type of position is a typical job placement for students completing a Bachelor's Degree at our school. Employers with openings for Computer Programmers and similar professional positions have recruited at our campus, always seeking graduates with the minimum of a Bachelor's Degree.

In more detail, duties such as solving complex business and technical problems could only be performed competently by a candidate with at least a Bachelor's Degree in Computer Science, or a related area. In a Computer Programming course taken by a Computer Science major, a student learns computer programming fundamentals such as algorithm design, flow charting, program coding, debugging, and elements of good programming style. This training is necessary to effectively work with projects involving Angularjs, nodejs, mongodb, C#, Javascript, and SQL. Additionally, in an Operating Systems course usually required in a Computer Science degree curriculum, the student studies the basics of modern operating systems, including context switching, synchronization, scheduling, linking, dynamic memory allocations, virtual memory, storage devices, directories, protection, and crash recovery. This type of preparation is essential to the Computer Programmer position, which requires the ability to work with terminal and Linux servers. Moreover, a course in IT Project Management required in many Computer Science degree programs will prepare the student for the responsibility of managing Mindfire Campaigns in building HTML pages for cross-media projects. Clearly, a candidate must have completed course work and training in Computer Science, or a related area at the undergraduate level at a minimum to competently handle the duties required by the Computer Programmer position.

The duties described above are not those of a lower-level employee performing tasks such as those duties performed by a Technologist or an IT-support employee, but rather those of a professional employee with a strong background in computer science concepts and principles and a great level of responsibility within the company. While related in that they all contribute to the engineering project life cycle, a Technologist or other types of support personnel would not be considered a Specialty Occupation like the Computer Programmer for Magna IV Color Imaging, Inc. These non-specialty occupation workers execute technical tasks assigned to them such as programming and writing code, while the Computer Programmer is responsible for

developing web storefronts and streamlining workflows. The superior background of a Bachelor's Degree in Computer Science, or a related area, or the equivalent qualifies the Computer Programmer to serve in this highly skilled leadership role as opposed to the non-specialty occupation workers discussed herein.

In addition, after comparing the responsibilities of this Computer Programmer position to existing job categories as defined by the Occupational Outlook Handbook 2017-2018 Edition (OOH) published by the United States Department of Labor/Employment and Training Administration (USDOL/ETA)[1], it is clear that this position should be classified as a "Computer Programmer" occupation. The OOH classification for Computer Programmers indicates that individuals in these types of positions are responsible for such duties as writing programs in a variety of computer languages, such as C++ and Java; updating and expanding existing programs; testing programs for errors and fixing the faulty lines of computer code; creating and testing code in an integrated development environment (IDE); and using code libraries, which are collections of independent lines of code, to simplify the writing. Upon comparing the duties performed by the Computer Programmer for Magna IV Color Imaging, Inc. with the duties generally performed by Computer Programmers, it is apparent that the Computer Programmer's duties are typical of a Computer Programmer and clearly correspond to the duties listed under the category of Computer Programmer in the OOH. It is noted in OOH that the entry level education for a Computer Programmer is a Bachelor's Degree, and that most have a Bachelor's Degree in a computer-related field.

Similarly, in consulting another respected resource, the O*NET[2] classification for Computer Programmer indicates that individuals in these types of positions are responsible for such duties as correcting errors by making appropriate changes and rechecking the program to ensure that the desired results are produced; conducting trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct; writing, updating, and maintaining computer programs or software packages to handle specific jobs such as tracking, inventory, storing or retrieving data, or controlling other equipment; writing, analyzing, reviewing, and rewriting programs, using workflow charts and diagrams, and applying knowledge of computer capabilities, subject matter, and symbolic logic; performing or directing revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements; consulting with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes; performing systems analysis and programming tasks to maintain and control the use of computer systems software as a systems programmer; compiling and writing documentation of program development and subsequent revisions, inserting comments in the coded instructions so others can understand the program; preparing detailed workflow charts and diagrams that describe input, output, and logical operation, and convert them into a series of instructions coded in a computer language; consulting with and assisting computer operators or system analysts to define and resolve problems in running computer programs; investigating whether networks, workstations, the central processing unit of the system, or peripheral equipment are responding to a program's instructions; assigning, coordinating, and reviewing work and activities of programming

[1] https://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm

[2] https://www.onetonline.org/link/summary/15-1131.00

personnel; and writing or contributing to instructions or manuals to guide end-users. Upon reviewing the duties generally performed by Computer Programmers according to O*NET, it is apparent the Computer Programmer for Magna IV Color Imaging, Inc. shares many of the same duties and falls under this occupational category. Additionally, O*NET states that most Computer Programmer positions require a four year Bachelor's Degree, and knowledge and skills in database management system software, development environment software, web platform development software, and related areas.

While the OOH and O*NET statements regarding the entry level education for a Computer Programmer appear to leave the possibility open for a minority of Computer Programmer positions to require less than a Bachelor's Degree, the Computer Programmer at Magna IV Color Imaging, Inc. would clearly be among the majority of Computer Programmer positions which would absolutely require Bachelor's-level preparation at a minimum. As a printing and graphic design firm, Magna IV Color Imaging, Inc. has extremely complex and extensive IT needs. The entire operations of the company depend on the expertise of the Computer Programmer to keep systems functional and optimized. As such, Magna IV Color Imaging, Inc. is among the employers that cannot afford to hire a candidate without at least a Bachelor's Degree to safeguard its systems. Therefore, Magna IV Color Imaging, Inc. would naturally seek out only a Computer Programmer for a position such as Computer Programmer among the majority of such professionals as described by OOH and O*NET who hold a Bachelor's Degree.

Having reviewed the position in detail, it is my opinion that these duties are specialized and require the theoretical and practical application of a body of highly specialized knowledge. Moreover, the duties as described are that of a Specialty Occupation as I understand the term as defined by the United States Citizenship and Immigration Services, which requires the attainment of a minimum of a Bachelor's Degree in a specific specialty.

Industry Standard for Computer Programmer

It is standard for a company such as Magna IV Color Imaging, Inc. to hire a Computer Programmer and require that individual to have attained at least a Bachelor's Degree in Computer Science, or a related area. It is typical for a printing and graphic design firm to hire a Computer Programmer or someone in a similar professional position, and require the minimum attainment of a Bachelor's Degree in Computer Science, or a related area for the position. The success of Magna IV Color Imaging, Inc., as of similarly situated companies, is largely dependent on the ability and expertise of a Computer Programmer or someone in a similar professional position, as the specialized duties of this individual directly and indirectly affect the company's operations, revenues and profits, and ultimately the overall success of the company. Therefore, the industry standard for a position such as Computer Programmer for Magna IV Color Imaging, Inc. is to be filled through recruiting a college graduate with the minimum of a Bachelor's Degree in Computer Science, or a related area, or the equivalent.

Summary of the Position of Computer Programmer

In summary, in the matter of the employment position of Computer Programmer offered by Magna IV Color Imaging, Inc., it is my professional and experienced opinion that the described job duties are of a professional nature and require preparation at the Bachelor's Degree level in Computer Science, or a related area at a minimum. The USCIS defines one of the standards for a Specialty Occupation as a position that requires a Baccalaureate or higher degree or its equivalent for the particular position. It is my opinion that this Computer Programmer position meets this requirement and qualifies as a USCIS Specialty Occupation.

Sincerely,

Michael K. Lavine

Dr. Michael K. Lavine
Adjunct Professor
The Graduate School - Cybersecurity & Information Assurance Department

DR. MICHAEL KEITH LAVINE

[redacted]

CAREER SUMMARY

Senior IT professional with over 25 years of work, consulting and research experience in information systems development and technology project implementations for Fortune 1000 companies, international corporations and medium-size regional organizations. A proven expert in the IT industry with current real-world experience leading large and medium technical teams. Previously, a Research Assistant Professor in Computer Science at the Whiting School of Engineering at Johns Hopkins University. At present, a Full Adjunct Professor of Cyber Security at the University of Maryland – University College.

Extensive Expertise in: System Development, System Engineering, Enterprise Architecture, Communication Systems, Cloud Computing, Cyber Security, E-Commerce Systems, Data Science, Computer Networks and Protocols, Human Computer Interaction, Mobile Technologies, Computer Forensics, Computer Hardware, Information Assurance, and Web Usability.

Prior Consulting and Grant Collaboration with: Microsoft Corporation, Lucent Technologies, NICE Systems, Boeing Corporation, L3 Communications, Bank of America, Bank of China, CP Ships, SiRRAN Corporation, Learning Tree Corporation, Carlson Wagonlit, C. Mer Corporation, Phoenix Vessel Services, National Security Agency, Department of Defense, Department of Homeland Security, LifeBridge Health System, and various International Law Firms.

Enterprise Systems: SAP, PeopleSoft, Oracle Financials, Salesforce and Workday.

Database Systems: Microsoft SQL Server, MySQL, Oracle, DB2, and Sybase.

Programming, Markup and Scripting Languages: Java, Python, Perl, PHP, C#, C++, COBOL, HTML, Visual Basic, XML, and Windows PowerShell.

Operating Systems: Windows, UNIX (e.g. AIX, Solaris, HP-UX), LINUX, OS/400, z/OS, and MVS.

Business Intelligence and Data Analytics: Microstrategy, Tableau, Qlick, SPSS, IDEA, and ACL.

Office Automation: MS-Office Suite, Office 365, Visio, MetricStream, and Lotus Notes.

EDUCATION

Ph.D. **City University, Cass Business School, London, England, March 2007**
Major: Management
Minors: Information Systems and Electronic Commerce
Doctoral Program Ranking: 24th Globally by the Financial Times in 2007/2008
Research Project: Cyber Security Information Sharing in the United States: An Empirical Study Including Risk Management and Control Implications 2000-2003
Dissertation Advisor: Professor Georges M. Selim

M.S. **Johns Hopkins University, Baltimore, Maryland, May 1999**
Information and Telecommunication Systems for Business
Concentration: Telecommunication Systems
Thesis Project: "Security and Trust Issues in Electronic Commerce"

MSc. **City University, Business School, London, England, February 1997**
Internal Auditing and Management
Thesis Project: "Implementing, Controlling and Auditing SAP R/3"

B.S. **Touro College, New York, New York, May 1988**
Finance - Magna Cum Laude and Departmental Honors
Additional Coursework: 30 credit hours of undergraduate Accounting courses

ACADEMIC EXPERIENCE

9/12 to Present
6/99 to 8/05

University of Maryland - University College
Adelphi, Maryland

Adjunct (Full) Professor – Currently, I am teaching the final capstone simulation and modeling online course in the MS in Cyber Security Program. Previously, taught graduate and undergraduate online courses in Internet Applications, Electronic Commerce, Management Information Systems, Accounting Information Systems and Auditing.

9/11 – 6/12

Johns Hopkins University – Information Security Institute
Department of Computer Science, Whiting School of Engineering
Carey Business School, Senior Professional Instructor
Baltimore, Maryland

Research Assistant Professor	7/10 – 6/12
Lecturer	7/09 – 6/10
Adjunct Professor	7/05 – 6/09

Provided classroom instruction for the Advanced Computer Forensics, Computer Forensics and Information Assurance Policy courses in the specialized Masters of Science in Security Informatics (MSSI) degree program. Pursued various government and non-government research grant opportunities. Developed a new course in Computer Forensics and work with industry practitioners to collaborate on an interactive laboratory. Supervise various MSSI research projects in a wide range of technical and policy domains. Also, provided classroom instruction for the following MBA courses: Information Systems, Information Systems Financial Management, Technology Management and Outsourcing, Organizational Behavior, Social Entrepreneurship and Auditing.

August 2005 to Summer 2010

University of Maryland – R.H. Smith School of Business
College Park, Maryland

Lecturer
Taught the undergraduate Accounting Information Systems (BMGT326) course (3-4 sections per semester) in addition to Auditing and Financial Accounting courses. Also, taught an MBA elective, Information Technology and Corporate Transformation in the Fall 2005 semester. Developed two preliminary course syllabi for the new Executive Masters of Science (EMS) program.

October 1999 to June 2011

[redacted]
London, England

Visiting Lecturer – Faculty of Management	10 /99 – 6/11
Associate Researcher – Centre for Research in Corporate Governance	4/07 – 6/11

Advisory Board Member – Centre for Internal Auditing 11/04 – 6/10
Provided classroom instruction for the Auditing Information Systems, Control and Auditing Systems, Operational Auditing, Corporate Governance, Audit Practice, and Concepts of Control post-graduate courses on the China EMBA, MSc. in Management and MSc. in Internal Auditing and Management programs. Supervise various EMBA and MSc. student research projects.

Summer 2003 to Summer 2010 [redacted]
Northfield, Vermont

Senior Instructor – Taught highly specialized on-line courses in Human Factors, Technical Defenses, Management Topics and Foundations of Information Assurance in the Masters of Science in Information Assurance degree program.

Fall 1997 to June 2005 [redacted]
Towson, Maryland

Assistant Professor of Computer and Information Sciences (CIS) 8/03 – 6/05
Visiting Assistant Professor of CIS and Accounting 8/00 – 7/03
Provided comprehensive classroom instruction for a variety of Computer Information Systems, Computer Science and Business undergraduate courses including: Information Assurance, Computer Security, Electronic Commerce, Systems Analysis and Design, Financial Aspects of Electronic Commerce, HCI, MIS, AIS, Advanced Auditing, and Principles of Auditing. Served as project manager for the National Security Agency's Center of Academic Excellence in Information Assurance Education program which was accepted and certified upon the first submission in AY 2001-2002. Served as Co-Faculty Advisor for the Computer and Technology Club. Participated in various committees related to Computer Science and CIS curriculum, research and student advising.

Senior Lecturer of Accounting 9/97 – 7/00
Provided classroom instruction for undergraduate classes in Accounting Information Systems, Advanced Auditing, Principles of Auditing, Principles of (Financial) Accounting I, and Principles of (Managerial) Accounting II; in this AACSB accredited accounting program. Advised accounting students about career options, summer internships, and job opportunities. Served as liaison to CPA firms and businesses for department functions, internship placement and student job fair.

INDUSTRY EXPERIENCE

06/13 to Present [redacted]
Baltimore, Maryland

Senior Technical Auditor
Conduct reviews, assessments, audits and consulting projects of the organization's cyber security technologies and high risk information technologies used by trading, portfolio management and IT personnel. Specialize in incident response and management, Oracle and internally developed applications. Provide cybersecurity SME services to various departments in the organization.

07/10 to 12/16 [redacted]
Panama City, Panama

Chief Technology Officer
Provide technical thought leadership on a wide range of telecommunications security and technical security countermeasures for clients in the government and private sectors. Assist the Managing Director in developing business development strategy and sales and marketing activities involving

manufacturers, value added resellers and end customers. Research and develop customized solutions for intelligence, military and law enforcement uses.

11/14 to 12/15 [redacted]
Seoul, South Korea

Chief Technology Officer
Provide technical thought leadership on a wide range of telecommunications security and technical offensive mobile security techniques for small scale digital device for the government and private sectors in Latin America. Assist the Managing Director in developing business development, sales, marketing, and research activities for the company through various use cases for worldwide application.

07/10 to 5/13 [redacted]
Baltimore, Maryland

Managing Director
Provided thought leadership to a foreign ally in Central America, U.S. national and state government organizations and businesses on cyber security. Designed and developed a 9 course 100% online Masters degree program in Cyber Security for the second largest public university in the USA. Perform a wide range of technical and policy related cyber security projects in the USA and Latin America.

11/03 to 7/10 [redacted]
Baltimore, Maryland

Managing Director
Conduct and coordinate a wide variety of computer forensics, electronic discovery, IT auditing, information assurance, security, information systems, auditing, fraud investigation and management consulting projects for a diverse group of international clients. Deliver professional training courses in the United Kingdom, Europe and Asia. Develop extensive experience working with law enforcement, government security specialists and senior business management.

10/97 to 6/00 [redacted]
Baltimore, Maryland

Senior Associate – Operational and Systems Risk Management Services
Provided information technology audits, security reviews, and consulting services to a wide variety of clients in the financial services, manufacturing, high technology, healthcare, middle market and government sectors. Coordinated annual audit support work for large and medium size organizations. Formulated business development strategies and specific opportunities to deliver additional firm services to prospective and existing clients.

MAJOR RESEARCH AND TEACHING INTERESTS

IT, Computer Science, Information Systems, Cloud Computing, Emerging Technologies, Mobile Commerce, Wireless Technologies, Artificial Intelligence, Data Science and Forensic Computing

E-LEARNING MANGEMENT SYSTEMS

Blackboard, WebCT, WebTycho and Moodle

GRANTS FUNDED RESEARCH PROJECTS

"Developing and Evaluating a Standardized Approach to Security Management Systems for U.S. and Israeli Hospitals: Security Management Systems and Required Technologies", (with W. Jaquis, M.D. and S. Scharf, M.D.), U.S. – Israel Science & Technology Foundation, November 2004 to June 2006

"An Information Assurance Scholarship Program for Towson University", (with A. Behforooz and P. Beere and J. Clements,), United States Department of Defense, August 2003 to August 2004

"The Role of the Internal Auditor in Mergers, Acquisitions and Divestitures", (with G.M. Selim and P.S. Sudarsanam), Institute of Internal Auditors Research Foundation, July 1999 to June 2002

Towson University, College of Graduate Education and Research, Summer Research Grant (including matching funds from the College of Science and Mathematics), 2002, 2003, and 2004

PUBLISHED JOURNAL ARTICLES

"Liberty Bell Hospital: A Case Study in Employee Computer Fraud", (with A.A. Baldwin and C.L. Martin), Journal of Business Cases, Volume 2, Issue Number 3, Fall 2006

"The Role of Internal Auditors in Mergers, Acquisitions and Divestitures: An International Study", (with G.M. Selim and P.S. Sudarsanam), International Journal of Auditing, Volume 7, Issue Number 3, November 2003

"Ten Professional Journals on Accounting Information Systems", (with A.D. Schiff), The Ohio CPA Journal, April/May 2002

"A Comprehensive Bibliography of Professional Journal Articles on Accounting Information Systems", (with A.D. Schiff), Review of Business Information Systems, Fall 2001

"The Impact of Electronic Commerce on Information Technology Auditing", (with A.A. Baldwin), Review of Accounting Information Systems, Winter 2000

"Internal Audit Outsourcing: A View from Both Sides of the Fence". (with C.L. Martin), The CPA Journal, March 2000

"Implementation Issues for SAP R/3 Accounting Software", (with W.R. Melville and G.D. Moyes), Review of Accounting Information Systems, Fall 1997

"Fraud: Which Audit Techniques Work in Detecting Fraud?", (with G.D. Moyes), Corporate Controller (now known as CFO), Volume 10, Issue Number 6, August/September 1997

PEER-REVIEWED CONFERENCE PAPERS WITH PROCEEDINGS AND/OR ABSTRACTS

"A Discretionary Access Control Method for Preventing Data Exfiltration via Removable Devices", (with D. Wilson), International Conference on Digital Forensics and Cyber Crime", Albany, New York, September 30 – October 2, 2009

"The Roles of Artificial Intelligence, Data Mining, and Knowledge Management in Accounting and Auditing: A Research Synthesis", (with Trinkle, B., Baldwin, A., Balli, E., Berry, B., Deshmukh, A., McKee, T., Ragothaman, S., Rosner, R. and Yao, L.), Eighteenth Annual Research Workshop on Strategic and Emerging Technologies, American Accounting Association Annual Conference, New York City, New York, August 2, 2009

"Acer Aspire Netbooks: A Forensic Challenge", (with A. Singh, T. Shiralkar and B. Turnbull), First IEEE International Workshop on Computer Forensics in Software Engineering, Seattle, Washington, July 20-24, 2009

"Computer Software Bugs and Other IT Threats to Critical Infrastructure: A Preliminary Set of Considerations for IT Governance", (with G. Selim), Seventh European Academic Conference on Internal Audit and Corporate Governance, April 15-18, 2009

"A Preliminary Approach to Conducting a Forensic Analysis of an Ultraportable ASUS Eee PC", (with T. Shiralkar and B. Turnbull), The International E-Forensics Conference, Adelaide, Australia, January 19-21, 2009

"An Efficiency Model Study to Evaluate the Impact of Port Security Activities on Port Productivity", (with M. Gonzalez, G. Quesada, and B. Trinkle), International Symposium and Workshop on Global Supply Chain, Inter-Modal Transportation and Logistics, Toledo, Ohio, October 25, 2007

"Detecting Non-Discoverable Bluetooth Devices: A Parallelized, Collision Resistant and Condensed Timing Approach", (with D. Cross, J. Hoeckle, J. Rubin and K. Snow), IFIP WG 11.10 First International Conference on Critical Infrastructure Protection, Hanover, New Hampshire, March 16, 2007

"Interim Research Observations about Critical Infrastructure Protection Information and Corporate Governance Issues through Public and Private Sector Cooperation in the United States", (with G.M. Selim), Third Annual Internal Audit and Corporate Governance Conference, London, England, April 9, 2005

"The Role of Internal Audit in Critical Infrastructure Protection and IT Governance: Developing a Research Agenda", (with A.A. Baldwin and W.R. Melville), Second Annual Internal Audit and Corporate Governance Conference, London, England, April 23, 2004

"A Current Perspective on the Diverse US Government Initiatives to Secure Cyberspace", Third European Conference on E-Government, Dublin, Ireland, July 3, 2003

"An Undergraduate Track in Computer Security", (with S. Azadegan, M. O'Leary, A. Wijesinha and M. Zimand), Eighth Annual Conference on Innovation and Technology in Computer Science Education, Thessaloniki, Greece, July 1, 2003

"Protecting the United States Homeland against Information Warfare and Cyber Terrorism", Second European Conference on Information Warfare and Security, Reading, England, June 30, 2003

"A Dedicated Undergraduate Track in Computer Security Education", (with S. Azadegan, M. O'Leary, A. Wijesinha and M. Zimand), Third World Conference on Information Security Education, Monterey, California, June 27, 2003

"Utilizing Vulnerability Scanning Tools in an Introductory Undergraduate Information Systems Security Course", Sixteenth Annual Federal Information Systems Security Educators Association Conference, Silver Spring, Maryland, March 4, 2003

"The U.S. National Infrastructure Protection Center: 1999-2001 - A Research in Progress Study", Third Australian Information Warfare Conference, Perth, Australia, November 28, 2002
"Benefits of Recognition as a Center of Academic Excellence in Information Assurance Education by the U.S. National Security Agency", (with S. Azadegan), Third Australian Information Warfare Conference, Perth, Australia, November 29, 2002

"Information Sharing in Information Systems Security and Auditing", First European Academic Conference on Internal Audit and Corporate Governance, Prague, Czech Republic, October 18, 2002

"The Role of Internal Auditors in Mergers, Acquisitions and Divestments", (with G.M. Selim and P.S. Sudarsanam), First European Academic Conference on Internal Audit and Corporate Governance, Prague, Czech Republic, October 18, 2002

"U.S. Federal Government Attempts to Address the Changing Issues in National Security: An Investigation into the Role of IT Security Protection", International Applied Business Research Conference, Puerto Vallarta, Mexico, March 16, 2002

"Liberty Bell Hospital: A Case Study in Employee Fraud", (with C.L. Martin), International Applied Business Research Conference, Cancun, Mexico, March 21, 2001

"New Strategies for Global Financial Reporting in the New Economy", (with M. Maloo), International Association for Accounting and Education Research, Third Biennial International Accounting Research Conference, Kobe, Japan, October 7, 2000

"Key Information Technology Security, Trust and Audit Concerns in an Electronic Commerce Environment", Asian Academic Accounting Association, 2000 Annual Meeting, Singapore, August 28, 2000

"The Effectiveness of Federal Government Programs in Healthcare Fraud", (with R. Komenski and C.L. Martin), Decision Sciences Institute, 1999 Annual Meeting, New Orleans, Louisiana, November, 20, 1999

"The Impact of Electronic Commerce on Information Technology Auditing", (with A.A. Baldwin), Eighth Annual Research Workshop on Artificial Intelligence and Emerging Technologies in Accounting, Auditing and Tax, San Diego, California, August 14, 1999

"Internal Audit Outsourcing: A View From Both Sides of the Fence", (with C.L. Martin), American Society of Business and Behavioral Sciences, 1999 Annual Conference, Las Vegas, Nevada, February 12, 1999

INVITED TALKS

"Enterprise Risk Management and Its Strategic Role in Belgian Public Sector Services", Executive Staff Secretariat to the Prime Minister, Federal Government of Belgium, March 18, 2010

"Security Management Systems in the U.S. and Israel: A Grant Project Status Update", Maryland Chapter of the International Healthcare Security and Safety Association, Baltimore, MD, October 12, 2005

"Mergers and Acquisitions: The Role of Internal Auditors", Institute of Internal Auditors, Financial Services Conference, Arlington, VA, April 12, 2004

BOOKS, BOOK CHAPTERS, TECHNICAL REPORTS, AND EDITORIALS

"Information Security and Assurance", Book Chapter, Introduction to Maritime Security, Editor M. McNicholas, Butterworth-Heinemann Publishing, London, December 2007

"Detecting Bluetooth Devices", (with D. Cross, J. Hoeckle, J. Rubin and K. Snow), Book Chapter, IFIP Series on Critical Infrastructure Protection, Editors E. Goetz and S. Shenoi, Springer Publishing, November 2007, ISBN 978-0-387-75461-1

"IT Security Essential Body of Knowledge: A Competency and Functional Framework", U.S. Department of Homeland Security - National Cyber Security Division, Contributor and Subject Matter Expert, Technical Report, September 2007

"E-Commerce and Auditing", (with A.A. Baldwin), An Editorial, International Journal of Auditing, Volume 7, Issue Number 2, July 2003

"Mergers, Acquisitions and Divestitures: Control and Audit Best Practices", (with G.M. Selim and P.S. Sudarsanam), Book, The Institute of Internal Auditors Research Foundation, Altamonte Springs, Florida, 2002

"Corporate Fraud", Book Review, The Accounting Review, American Accounting Association, Volume 74, Issue Number 2, August 1999

CURRENT RESEARCH IN PROGRESS

[redacted]

JOURNAL EDITORIALSHIPS AND REFEREE POSITIONS

Member, Editorial Board, International Journal of Digital Forensics & Incident Response

Member, Editorial Board, International Journal of Auditing

Ad-Hoc Reviewer, IEEE Security & Privacy, International Journal of Critical Infrastructure Protection, Journal of Electronic Commerce Research, International Journal of Accounting, Auditing and Performance Evaluation

Guest Co-Editor, International Journal of Auditing, Special Issue on the Impact of E-Commerce on Auditing, Spring 2003

SERVICE FOR ACADEMIC CONFERENCES AND MEETINGS

Conference Program Committee Member and Reviewer for the following events:

Colloquium of Information Systems Security Education, 2011
Human Aspects of Information Security and Assurance International Symposium, 2008 thru 2012
IFIP WG 11.10 International Conference on Critical Infrastructure Protection, 2011 thru 2007
International Conference on Intelligent Pervasive Computing, 2007

Reviewer for the following events:

European Conference on Information Warfare and Security, 2005 thru 2013
European Conference on Electronic Government, 2006 thru 2009
Hawaii Int'l. Information Systems Conference Computer Forensics Mini-Track, 2009, 2008, and 2007
International Conference on Information Warfare, 2006 thru 2013

CITIZENSHIP

United States of America

Exhibit F – Employer Support Documents



MAGNA IV

COMPUTER PROGRAMMER POSITION

DETAILED JOB DESCRIPTION

I. Company Overview:

MAGNA IV Color Imaging, Inc. ("MAGNA IV") has been in business since 1975 and has prided itself on forward thinking to skillfully blend the latest technological advances with highly trained and passionate people. This mindset has allowed MAGNA IV to successfully evolve from its humble beginnings to become a leading print and marketing company in the mid-South—serving diverse clients from coast to coast.

For more than 40 years now, MAGNA IV has built a winning reputation among corporations, non-profits, restaurants, retailers, higher education institutions, manufacturers, advertising agencies, and graphic designers. MAGNA IV strives to exceed customers' expectations by providing them the expertise and high-quality print and marketing products their businesses need to succeed. It handles every detail—from design to production—so customers can focus on what they do best.

At MAGNA IV, all the work is produced in-house, under "one roof". Indeed, its staff has the technical expertise to meet any client's specific needs, whether it is setting up an online marketing portal to manage customers' brand collateral or creating a multi-channel marketing campaign to drive engagement among key audiences. MAGNA IV has the expertise to meet any client's needs. MAGNA IV's facility is equipped to handle any type of printing service—digital, offset, wide format, variable data—as well as fulfillment and mailing services. In order to provide excellent and advanced services to its clients, MAGNA IV relies on highly qualified and motivated computer programmers.

II. Minimum Requirements for the Position

Due to the highly sophisticated nature of the position of Computer Programmer at MAGNA IV, an applicant must meet the following requirements:

- Minimum of a Bachelor's degree in Computer Science or related field
- Experience with HTM, CSS, JavaScript, C#, SQL, .Net, PHP, Object-oriented programming
    - JQuery, Ajax, AnguarJS, NodeJS or Linux a plus
- Experience with ecommerce platforms Magento, PrestaShop or Pageflex a plus

III. Summary of Job Duties – Computer Programmer

The position of Computer Programmer at MAGNA IV is a full-time position responsible for the development of Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design and PrestaShop development. The Computer Programmer position writes Crystal Reports and adds functionality to the MIS system Enterprise32 in addition to writing scripts for Kodak's Rules-Based Automation for changing or improving workflow. Some of the varied duties of the position include, but are not limited to, the following:

- **Assist in developing, supporting and extending web storefronts power by Pageflex, PrestaShop and Wordpress, further details listed below in the detailed duties section.**

- **Manage [redacted] in building html pages for cross-media projects, such as:**

  1. Building HTML pages for Magna IV and sending such pages out to potential customers to gather information and sending the information back to sales team; and
  2. Building HTML pages and utilizing the Mindfire tool with external databases to send out the pages to potential customers of the clients for events/products promotion.

- **Build Studio templates for customizable or static items and general site maintenance, such as:**

  1. Utilizing Pageflex Studio to build the customizable product templates to include clients' specified variable components, and program the product templates from the back-end in order to demonstrate the corresponding customizable products on the e-commerce platform storefront portal;
  2. Building the static product templates for clients in Pageflex studio, and program the product templates to demonstrate the corresponding products on the e-commerce platform storefront portal; and
  3. Programing the product information, including price, quantity, and inventory etc. from the back-end of the e-commerce platform.
- **Site skinning, report building and database implementation, such as;**

  1. Working on site skinning using CSS, JavaScript, and HTML to modify e-commerce portal websites by changing themes, adding customizable images, buttons, and information displayed etc., and creating functionalities for users to easily and efficiently customize the websites based on their needs; and
  2. Reporting and building database implementation as listed below in Detail Duties section.

- **Collaborate with departments to streamline the workflow between systems, examples listed below in the Detailed Duties section.**

- **Interact with other personnel in solving complex business and technical problems, such as:**

  1. Writing queries for databases to solve system users' issues as fully explained and listed below in Detailed Duties section; and
  2. Solving email server corruption issues, by working with vendor IT groups and a data recovery companies to successfully recovered critical data on the server;

- **Work with scratch coding in PHP, MySQL, examples listed below in Detailed Duties section.**

- **Work with projects involving Angularjs, nodejs, mongodb, C#, Javascript, and SQL, such as**

  1. Building Business to Business web to print websites for clients using Angularjs;

2. Building schedule boards using Nodejs and mongodb, for internal job scheduling; and
3. Work with projects involving C#, Javascript, and SQL as listed below in Detail Duties Section.

- **Work with terminal and Linux servers, such as:**

1. Updating software, host websites and databases in Linux server, and operating and managing the Linux server using terminal;
2. Running specific command lines on terminals to create and modify the program files; and
3. Write programs in different programming language on Linux server, and test the programs on the Linux server.

It should further be noted that the Computer Programmer position at MAGNA IV requires the individual to work independently and without oversight. All of the Computer Programmers at MAGNA IV housed within the IT/Technical Services department report directly to the President of the company.

IV. Detailed Job Duties – Nature of Specific Duties are Specialized and Complex

The following provides the very specific and highly detailed job duties of the position of Computer Programmer at MAGNA IV. As the detailed summary will demonstrate, it is clear that the specific duties of the Computer Programmer position at MAGNA IV are so specialized and complex that the knowledge to perform the duties of the position requires a Bachelor's Degree in Computer Science, or closely related field. In general, the Computer Programmer position is responsible for the following duties as it relates to each specific program and tasks:

- Write, analyze, review, and rewrite programs, using workflow chart and diagram, and applying knowledge of computer capabilities, subject matter, and symbolic logic;
- Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced;
- Perform or direct revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements;
- Write, update, and maintain computer programs or software packages to handle specific jobs such as tracking inventory, storing or retrieving data, or controlling other equipment;
- Consult with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes; and
- Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct.

As it relates to the specific and detailed job duties of the position, the following provides an overview of the specific projects and programs that are currently being developed, maintained and tested by the Computer Programmer Position.

1. **Detailed Duties:**

- **Responsible for the [redacted] (5% of Time)**

[redacted] is a program written in PHP, JavaScript, HTML, and C# languages. It was developed from scratch at MAGNA IV Color Imaging, Inc. [redacted] plays an essential role in completing the orders placed

on [redacted], for its abilities in automating the processing of orders. The program has the functionality of sending job order information on the [redacted] to the [redacted] The program is also able to generate invoices and send to customers.

The Computer Programmer is required to update and expand the [redacted], test [redacted] for errors and fix the errors. In order to be able to fulfill the job duties, the Computer Programmer is required to completely understand the existing program, which is a complex combination of codes in PHP, JavaScript, HTML, and C# languages.

The Computer Programmer must have the ability to understand the needs of the main user of the program, design department, through adequate and professional communication with no oversight or additional training.

After a clear idea has been formed and agreed to, the Computer Programmer is directly responsible for adding the requested functionalities as soon as possible when updating and expanding the [redacted] and makes sure the program is accurate and user-friendly. Testing of the program on a regular basis is also necessary to guarantee the program is free of errors. The tools used for working with [redacted] are CodeRunner, Sublime Text, and Visual Studio. To successfully perform the aforementioned job duties, skills need to be possessed include familiarity with programming in various programming languages, ability to transform users' exact idea into program in a short amount of time, to test programs, and to fix problems related to programs.

The [redacted] is used daily at MAGNA IV Color Imaging, Inc., and the program has been executed smoothly, updated, expanded, and tested regularly.

- **Responsible for the [redacted] and Write Crystal Report (25% of Time)**

[redacted] system at MAGNA IV Color Imaging, Inc. The system manages activities in all divisions and provides supports to all the employees. It has a built-in database which manages employee data, production data, and financial data etc. [redacted] connects to multiple servers including SQL server and Pageflex server. The Computer Programming position supervises the entire system. The Computer programming position is responsible for managing the built-in database, writing codes in SQL to create queries, updating and expanding existing queries, and guaranteeing data quality. The queries have different functionalities such as select data and modify data. The tool used to manage the database is Microsoft SQL Server Management Studio 17.

The Computer Programmer is responsible for writing crystal reports which are designed from the [redacted]. The Computer Programmer uses SQL Server Management Studio 17 and crystal report software to build the crystal reports that are associated with the SQL database programmatically stored procedures. Crystal reports are written in C# programming language in Visual Studio, and the reports are created to present to different departments within the company. The reports sort, group, and format data, and are created based on the needs of different departments, employees, and clients. The Computer Programmer is also responsible for troubleshooting the system when problem occurs.

[redacted] is a vital system at MAGNA IV Color Imaging, Inc. The supervision of this database requires the understanding of the system from the perspective of a programmer, to be able to monitor the accuracy, safety, and efficiency of not only the system itself, but also its related components such as database, servers, and troubleshooting tools.

- **Responsible for Creating New Programs, such as the [redacted] (15% of Time)**

The Computer Programmer is required to create new programs from scratch. For instance, Mr. Zhao, as the Computer Programmer at has successfully developed a new program called the [redacted] The tool utilized is Xcode. The [redacted] is programmed in Swift programming language. It is a product which was designed for a specific client and is highly sophisticated. [redacted] Mr. Jiaqi Zhao started writing the program from scratch and is in charge of updating and expanding the program. The program testing will be completed by Mr. Jiaqi Zhao after the development process is completed. This task involves programming, updating, expanding, and testing. Mr. Jiaqi Zhao is developing this program based on the needs of the clients. The communication and development have been continuing on a good progress.

The Computer Programming position is responsible for creating new programs for clients, based on client requests. Due to the varied nature of requests, the Computer Programmer must have a highly theoretical and practical knowledge of a vast number of programming languages, which requires obtainment of a Bachelor's Degree in Computer Science or a closely related field.

- **Responsible for PHP Mailing System (5% of Time)**

PHP Mailing Program is an automation program which is developed for Mailing Department in PHP programming language. The program has the functionality of inputting csv files into the program and retrieve essential information to be used for Every Door Direct Mail Facing Slip pdf files. Inside the program, data input will be changed into different information based on the built-in formula. The csv files are converted from Every Door Direct Mail Documentation for PS FORMs which were originally in pdf format. The skills needed are mainly related to programming.

- **Responsible for [redacted] (5% of Time)**

[redacted] is an automation extension for MAGNA IV Color Imaging, Inc.'s e-commerce platform [redacted]. The extension is written in C# programming language. [redacted] The pdf file and mailing list file related to a customer order are transferred to the [redacted] by the [redacted]. Meanwhile, a JSON file is generated. When the JSON file runs in Switch, the two corresponding files are retrieved from the FTP folder to create direct mails, postcards, or other products. The Computer Programmer is required to update, maintain and modifying the extension based on users' needs, utilizing advanced programming skills. The tool used is Visual Studio. With the assistance from the Computer Programmer, the Switch FTP extension makes the processing of order more convenient and efficient.

- **Responsible for [redacted] (5% of Time)**

[redacted] is an extension which assists the shipping cost calculation process. The extension is written in C# programming language and is used on Pageflex. The database saves codes for the products. The codes can refer to products' shipping costs. A formula is created within the extension to calculate orders' final shipping costs. The formulas can be customized based on users' preferences and

needs on how the costs to be calculated. If user designs that a discount will be available when certain quantity requirement is met, the costs after discounts would be able to be calculated by the formula. The Computer Programmer is directly responsible for modifying the extension based on users' needs with using various programming languages and mathematical calculations.

- **Responsible for [redacted] (5% of Time)**

[redacted] is a program which is used as a back-up plan for Pageflex. The program is developed in PHP programming language. Whenever the server runs slow or times out, the job order information will not be pulled into the [redacted] because of connectivity issues. The program is able to load information to the [redacted] if corresponding number is manually input into the program. Based on users' instructions, the Computer Programmer is directly responsible for updates, expands, and testing the program regularly. The tool used in working with this program is TextWrangler.

- **Responsible for Web Development (10% of Time)**

The Computer Programmer is responsible for programming applications for web development. For instance, the Computer Programmer is responsible for designing, constructing and maintaining programs such as MAGNA IV's Request for Estimate Form Website, which is a website which saves information for estimators to estimate the total price of an order, after the sales team communicates with the clients. The website program saves paper usage and sales and estimators' time, because it allows the information to be transferred through the website. The website was developed in HTML.

Another instance of a program that the Computer Programmer is responsible for creating is the Website GSI Form. This website is developed to manage the mysql database on the bluehost server. It is able to add new, search, edit, delete, print, export to excel or csv, and copy. The functionalities can be used on selected range of data. The website was developed in HTML, PHP, and CSS. The tool used in developing websites is CodeRunner.

- **Responsible for Pageflex e-commerce platform (25% of Time)**

The Pageflex e-commerce platform is directly managed by the Computer Programmer. The Computer Programmer is directly responsible for ensuring that the contents showing on the platform are the same as the current inventory information. The Computer Programmer must cooperate and communicate regularly with the fulfillment department to guarantee the accuracy of the information on the website. Additionally, the Computer Programmer is responsible for modifying, removing, and editing the inventory information on PrestaShop using advanced knowledge of the PHP programming language. The Computer Programmer works on the recapture by using Google APIs and PHP programming language to avoid improper access to the website from robots. The tasks require advanced web development knowledge, sophisticated programming skills, and highly advanced and developed information security concepts. Regexes are used on the admin sites of Pageflex to set limitations on users' inputs. The Regexes are written in the JavaScript programming language. The Computer Programmer is in charge of writing Regexes. The skills needed are related to mathematics and programming. Users report issues, needs, and other program related concerns on MAGNA IV's portal and the Computer Programmer is responsible for checking the portal regularly and solving the problems.

2. **Duties relationship to Mr. Jiaqi Zhao's Bachelor's Degree**

Mr. Jiaqi Zhao would not be able to perform the duties of the position of at MAGNA IV without the completion of his Bachelor's Degree in Computer Science.

Computer Science courses build critical foundations for skills related to problem solving, programming using dynamic memory management, and the object-oriented programming paradigm. When earning his degree, Mr. Jiaqi Zhao learned how to analyze basic computer programs and design object-oriented solutions; identify the relationships between all objects using such concepts as containment and inheritance; implement the design for specific problems solution using various programming languages; creating basic data structures; and completing unit testing and validating the implementation of problems using a debugger.

The courses that Mr. Jiaqi Zhao took while earning his degree prepared him to complete complex programming tasks:

- Visual Studio software, which is also an essential tool frequently used on his job.

- The necessary tools and complex understanding of programming languages when Jiaqi Zhao works with updating, expanding, and testing the [redacted], a program that is written in PHP, JavaScript, HTML, and C# languages. When updating the program, Mr. Jiaqi Zhao needs to understand the problems and issues based on user's needs, and provide object-oriented solutions. It should be noted that C++ is very difficult to be fluent in, and students who are fluent in C++ usually find languages such as C# and Java easier. As such Mr. Jiaqi Zhao's bachelor's degree prepared him to work with a variety of programming languages, including the very difficult C++.

- As part of his Bachelor's Degree Program, Mr. Jiaqi Zhao mastered a theoretical and highly sophisticated understanding of Objected Oriented Software Development Using Java, including an understanding of the fundamentals of object-oriented programming including the ability describe the solution to a simple software requirement in terms of object-oriented analysis and design techniques when given a problem specification.

- Mr. Jiaqi Zhao also mastered the theoretical and practical application off-the-shelf Integrated Development Environments (IDE) to construct and debug multi-class object-oriented applications in Java. Even though the only programming language used in this class was Java, the concepts and ideas conveyed in this class is widely applicable for other programming languages. MAGNA IV Color Imaging, Inc. works with clients frequently, for it provides printing and marketing services and Mr. Jiaqi Zhao must work closely with object-oriented programming, programming based on software requirements, designing and implementing software solutions, exception and event handling, client-server environment, command line, Integrated Development Environment (IDE), and Graphical User Interphase (GUI).

- As part of Mr. Jiaqi Zhao's Bachelor's Degree, he also gained the sophisticated and complex understandings required by a Computer Programmer to have the ability to work on creating, updating, and expanding extensions for MAGNA IV's main e-commerce platforms Pageflex. For this task he uses C# for object-oriented programming. He programs based on requirements and problem specifications from user, troubleshoots platforms, manages platforms from both client

side and server side. Command line and Integrated Development Environment (IDE) are used as tools when performing his job duties.

- One of the elective courses Mr. Jiaqi Zhao took was CSCI 4357 Programming Mobile Devices. The programming language used in developing applications for mobile devices in this class is Swift. Mr. Jiaqi Zhao works on Swift programming for applications at MAGNA VI that are critical for the success of MAGNA IV.

- Another elective course Mr. Jiaqi Zhao took was CSCI 5365 Web Technology. Mr. Jiaqi Zhao took the graduate version of this course. Graduate version of courses typically has higher standards compared to the undergraduate version. Graduate version tends to be more rigorous on the requirements and the grading scales. Because of his Bachelor's Degree and knowledge gained by virtue of this degree Mr. Jiaqi Zhao works with the development of websites as the Computer Programmer at MAGNA IV, including the Request for Estimate Form Website. The Website is built with HTML and CSS. The Website is developed in PHP, and is developed to assist a MySQL database. After completing this class, he became fluent in Web Technology related languages such as PHP, CSS, HTML, and Java Script, and he understood how to create and use database in a Web site, which are all frequently used on his job as Computer Programmer. CSCI 5365 Web Technology provided Mr. Jiaqi Zhao the knowledge he needs to perform the Web related job duties.

- Mr. Jiaqi Zhao's Computer Programmer position utilizes the basic programming knowledge on a daily basis, because of the fact that programming is an important component of Mr. Jiaqi Zhao's job duties. In addition to his direct programming courses, Mr. Jiaqi Zhao also has a highly sophisticated understanding of other important aspects of the Computer Programming position and his ability to perform those duties as a result of taking the following types of courses: Assembly language and Computer Organizations; Social Implications Technology; Computer Architectures; Applied Computing; Operating Systems; and Networking. Computer Programmer Mr. Jiaqi Zhao needs the aforementioned courses in order to have a well understanding of computer systems, career, hardware, computer organizations, and social aspects of Computer Science fields to perform his position at MAGNA IV, as Mr. Jiaqi Zhao must have the ability and knowledge to troubleshoot systems and work with servers and hardware. Additionally, Mr. Jiaqi Zhao needs to know the computer systems and organizations to perform corresponding job duties and he gained these knowledges only by taking courses from his bachelor's degree, including Data Structures and Algorithms.

V. A Bachelor's or Higher Degree or its Equivalent is Normally the Minimum Requirement for Entry into the Position

Consistent with the Computer Position as described by the Department of Labor's Occupational Outlook Handook (OOH) and the O*NET Online, the Computer Programmer position as offered to the Beneficiary by MAGNA IV conform with the requirements that the position requires a Bachelor's Degree in Computer Science. According to the O*NET Online, approximately eighty-eight percent (88%), i.e. the vast majority of Computer Programming positions, require at least a Bachelor's Degree in Computer Science as an entry level requirement into the field.

VI. MAGNA IV Normally Requires a Bachelor's Degree in Computer Science, or Closely Related Field

As provided to USCIS, MAGNA IV normally requires a Bachelor's Degree in Computer Science, or Closely Related Field for the position of Computer Programmer. All of the current Computer Programmers at MAGNA IV have at least a Bachelor's Degree as follows:

- [redacted] – Master's Degree in Computer Science (Former Employee)
- [redacted] - Master's Degree in Computer Science
- [redacted] – Bachelor's Degree in Computer Science

Please note that [redacted] is not a Computer Programmer. His position at MAGNA IV is "Storefront Administrator" and as such he is not included in the above list.

VII. Degree Requirement is Common to the Industry in Parallel Position among Similar Organizations

The degree requirement for the position of Computer Programmer at MAGNA IV is common to other similar positions in the field. Indeed, given the ever expanding scope of duties and requirements to perform in highly complicated and sophisticated environments, Computer Programming positions are uniformly requiring a Bachelor's Degree in Computer Science, or closely related field. This is true, not only at MAGNA IV, where all of our Computer Programmers have *at least* a Bachelor's Degree, but at our competitors as well. It is simply not possible to have highly complicated, sophisticated and unique programming tasks completed in a satisfactory way, with little to no oversight without the skills obtained while earning a Bachelor's Degree in the Computer Science discipline, or a closely related field.

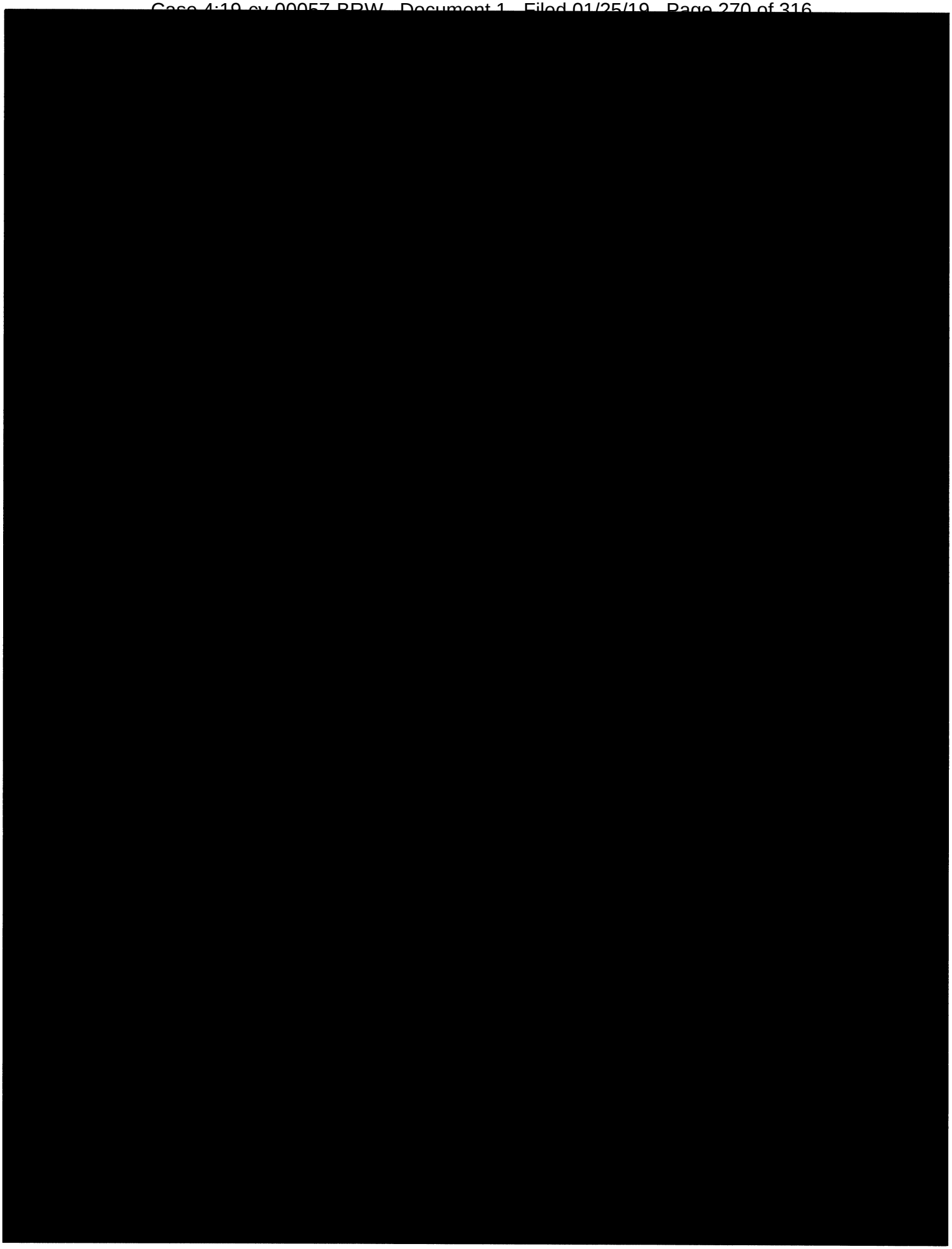
The industry of marketing and advertising is a particularly niche with its own idiosyncrasies and challenges. It requires creativity, critical thinking and ability to adapt on the fly. Only Computer Programmers with the requisite background of a Bachelor's Degree in Computer Science, or a closely related field, can apply the necessary theoretical and practical application of the body of highly specialized knowledge to carry out the duties performed by the Computer Programmer.

I, Kristi Dannelley respectively submit the above documentation on behalf of MAGNA IV. My position at MAGNA IV is President and I have direct knowledge about the duties and requirements of the position of Computer Programmer at MAGNA IV.

Kristi Dannelley

September 25, 2018

[redacted]




MAGNA IV
Painting solutions simplified.



Since opening our doors in 1975, we've combined skillful craftsmanship with the latest technological advances to deliver superior results. Today, we are proud to be one of the largest printers in the Mid-South and top commercial printers nationwide. With all work done under one roof, we help clients streamline their brand management to shorten time-to-market and ensure they reach their target audiences quickly and cost-effectively. From creative services to fulfillment and distribution, we have the capabilities to complete print and marketing projects of any size or scope.

DIGITAL PRINTING

Our cutting-edge digital printing presses allow us to print directly from files to paper products or substrates without a printing plate. This is especially useful for clients looking for quicker production turn time, lower setup costs and the option for variable data.



Perfect for time-sensitive material

High-quality materials on shorter timeframes

Easy versioning for multiple store locations



VARIABLE DATA PRINTING

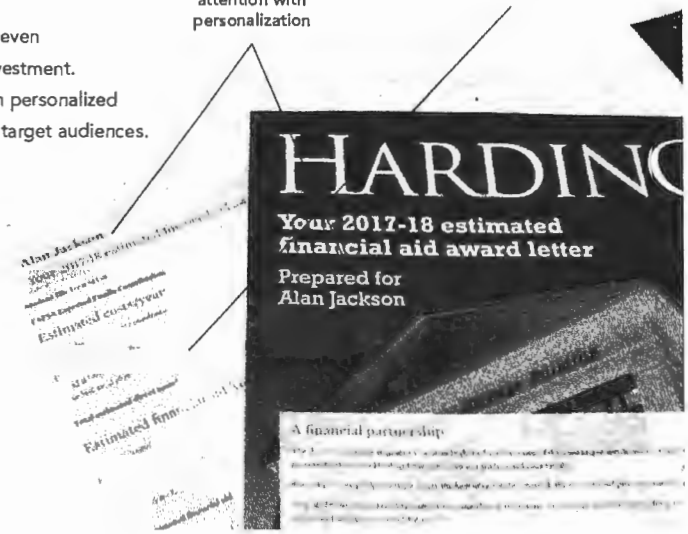
Through variable data printing, we can help double, or even triple, response rates and ensure a greater return on investment. Clients can tailor each piece of marketing collateral with personalized emails, text messages or landing pages to better reach target audiences.

"Through the years, Magna IV's skilled team has helped with all our print and marketing needs—from magazines to new student collateral. Their care for each job is top-notch."

[redacted]

Capture the reader's attention with personalization

Custom appeals drive response rates



OFFSET PRINTING

Our offset printing services allow for high-quality images, consistent colors, flexibility in sizes and inks, quicker production times, and lower costs for large print runs. We've perfected the process of printing on plastic substrates, which lends itself well to menu printing, and can offer finishing capabilities like perforating, scoring, embossing, die cutting and laminating.

"Magna IV has been a valued vendor for more than 10 years. Their offset printing knowledge and attention to detail are second to none."



Maintain superior quality and color consistency across collateral pieces



Ideal for long runs and large quantities



UV PRINTING

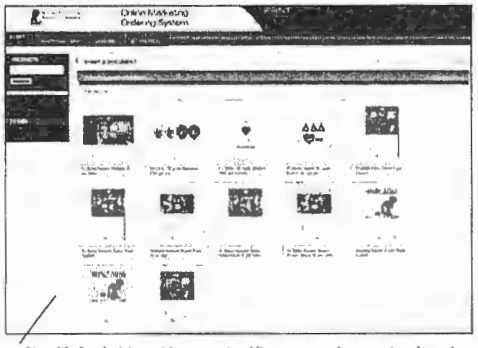
Our ultraviolet (UV) printing services allow for more vivid colors, greater opacity, sharper details, higher abrasion resistance and longer life spans. The ink dries within seconds, eliminating the drying time required by conventional offset printers so clients can get products into the marketplace quicker. We use this environmentally friendly technique on a wide variety of substrates such as plastic, foil, synthetics, vinyl and more. We offer specialty coatings like matte, high-gloss and satin, as well as soft feel to give substrates a smooth, velvet-like finish. We can even apply a high-gloss varnish on top of the soft feel to accentuate images or bold type to give collateral extra "pop!" Unlike other printers, we can do reticulation to give materials a high-gloss, silk contrast while offering the option for a textured feel. We can also apply raised spot coating, which gives materials an impressive three-dimensional texture. This technique can be used on marketing materials like menus to add water drops on a leaf or salt on a margarita.

"For more than 20 years, we've trusted the Magna IV team with producing our dining, beverage, kids and supplemental menus (several times a year, every year!) that continuously evolve to be better than the last. We recently went from a mix of traditional printing methods to straight UV, which has improved our menu quality and durability. We have big plans for our menus in the future, and I'm excited for what we come up with next!"

[redacted]

WEB-TO-PRINT PORTALS

Our online marketing portals allow clients such as national restaurant chains, retailers and nonprofits to create, customize and order print and marketing materials for consistent branding standards across multiple locations. Users can search approved materials; select the products and quantities they need; customize the collateral or ideas; and place the order all at one location.

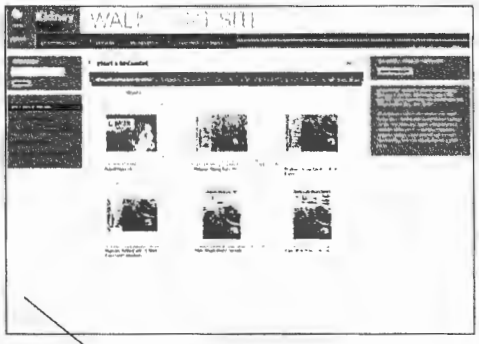


Simplify fundraising with customized literature and promotional products



Centralize marketing products for convenient access





Easy ordering of event and recruitment collateral

"Switching the customization of our fundraising materials over to Magna IV's web-to-print solution has saved us countless hours. On top of that, our overall printing costs are now lower. But the real icing on the cake is the excellent customer service we get."

[redacted]

CROSS-MEDIA MARKETING

Through personalized direct mail, email marketing, text messaging, personalized URLs (PURLs), generic URLs (GURLs) and drip marketing campaigns, we help clients better connect with current and potential customers. Our cross-media platform also includes a detailed response management tool to easily track responses, refine marketing lists, and instantly distribute up-to-date information to individuals or large lists.

"Magna IV has helped us implement a successful 'New Movers' direct marketing campaign so we can better engage with patients in the area. With innovative technologies such as personalized landing pages and online dashboards, they've made it easy for us to see the results of our marketing efforts."

[redacted]



LARGE-FORMAT PRINTING

With our large-format equipment, we can print materials up to 10 feet wide on paper, vinyl, plastic, mesh, or the surface that works best for our clients' needs. And customization is always an option! We have advanced multi-plotting and cutting equipment so we can finish materials in any shape or size.

We can also create eye-catching graphics for commercial or residential interior design projects. We can provide the designs or work with creative teams to produce graphics such as wall wraps, wall murals, custom wallpaper, floor graphics, danglers or custom signage. We'll even do installation!







"Magna IV continuously helps make our in-store POP bigger and better, year after year. We recently rolled out new banner formats and semipermanent standees that have really made a visual impact in our 90+ stores."

[redacted]

Add extra pop to in-store marketing with cost-effective 3D displays

LARGE-FORMAT PRINTING
INTERIOR GRAPHICS





Transform rooms with custom wallpaper or decals



"Magna IV was not just a printer, they were true partners in the process. When we presented out-of-the-box ideas, they made it happen with no hesitation. By the end of the project it felt like their team was part of the Mars family because they cared about the project as much as we did."

MARS



Use our custom installation services to streamline interior design projects

FULFILLMENT & DISTRIBUTION

We are proud to work with large corporations and nonprofits such as [redacted] and others from production to the final kitting or inventory staging. We have a comprehensive distribution warehouse on-site, which ensures products are packaged and shipped accurately and cost-effectively. Our state-of-the-art custom management information system and real-time reporting tools allow clients to easily track products and ensure they reach destinations on-time and on-budget.



Ensure products arrive undamaged with custom packaging



Kit and ship projects efficiently and economically for 10 or 10,000 locations

DIRECT MAIL

We know the ins and outs of every U.S. Postal Service (USPS) rule, regulation and rate. We can complete NCOA processing, merge/purge, presort and even data list scrubbing. We can also package, tray and deliver projects per USPS requirements or utilize new technologies like Every Door Direct Mail (EDDM) to ensure messages are sent as efficiently as possible.

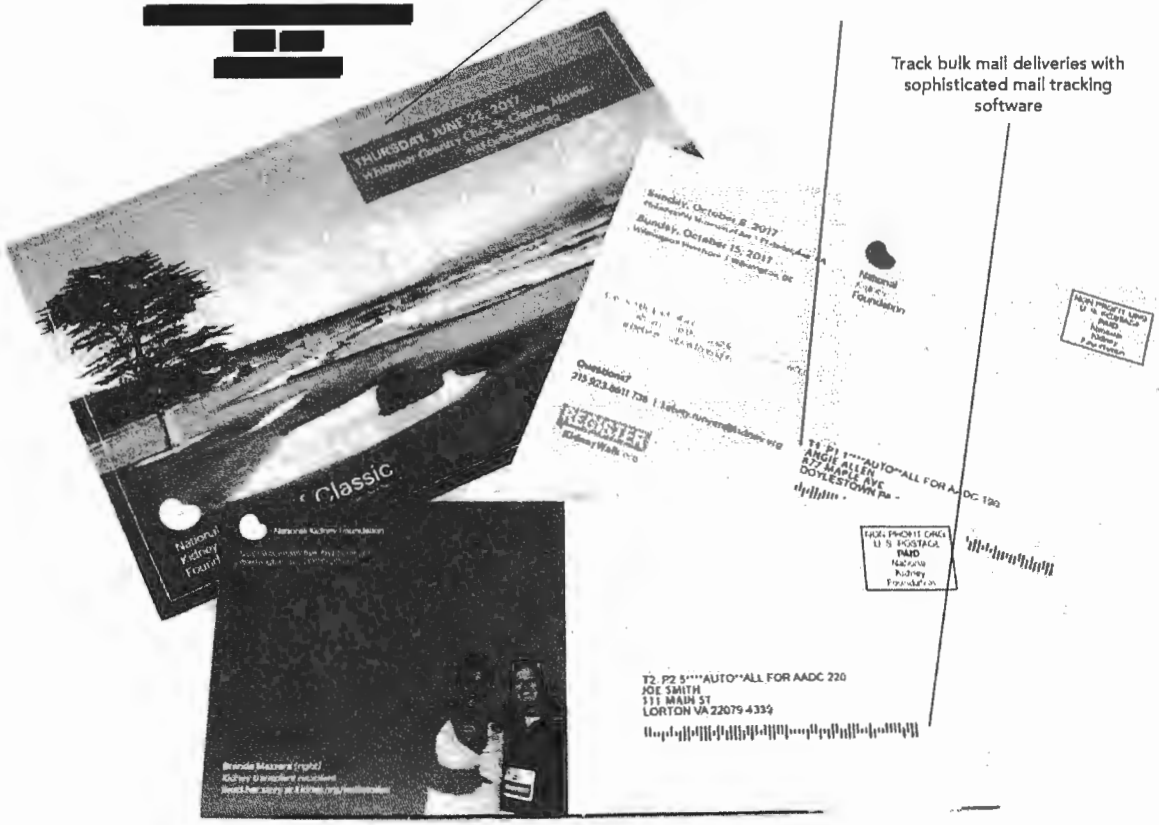
"It's always a pleasure to work with the Magna IV team. They ensure we have quality products, printed and produced with consistency, throughout our organization."

[redacted]

UV coating adds an extra layer of protection and an eye-catching glossy look

Increase response rates by procuring mail lists with qualified prospects

Track bulk mail deliveries with sophisticated mail tracking software



PROMOTIONAL PRODUCTS & BRANDED APPAREL

Every week, we turn out thousands of products to bring a professional, consistent and upscale look to brand apparel. We can embroider products in a single color or multicolor thread. We even have dye sublimation capabilities in-house that allow us to print on a wide range of products including fabric, plastic and paper – the possibilities are endless!

We can also create one-of-a-kind promotional products to help clients build their brands. We are part of an international buyers network, which gives us unlimited access to source and purchase items from a wide variety of manufacturers.

"The embroidery items we got through Magna IV were great. I highly recommend them and plan on using them again in the future."



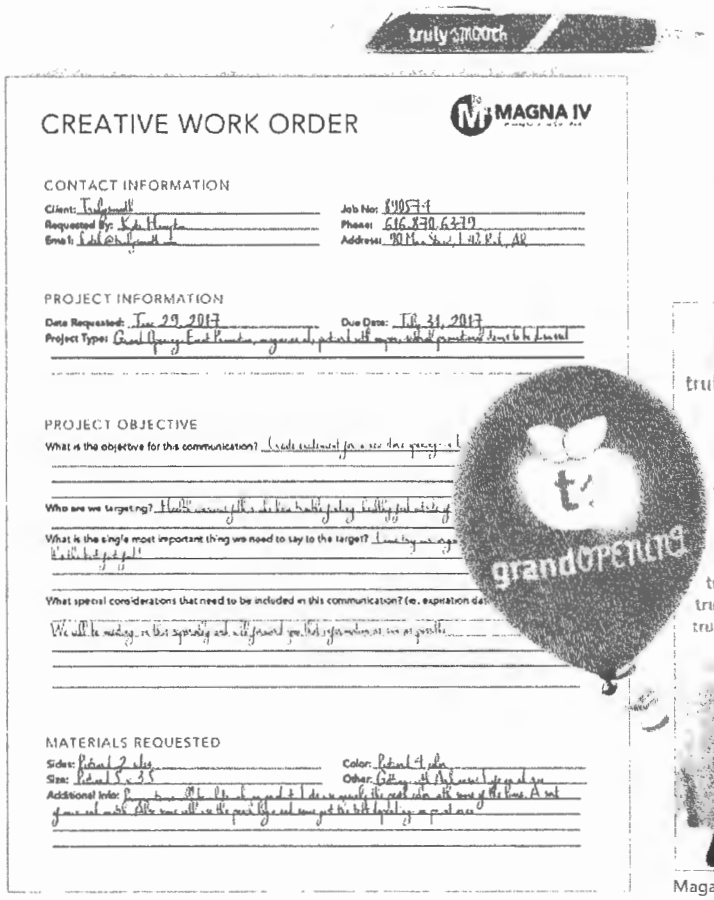
FLEET GRAPHICS

We can create partial or full vehicle wraps with logos, graphics, colors and text to help businesses cost-effectively advertise their brands and reach new customers. All wraps are made with high-quality vinyl so they can be installed or removed without damaging vehicles' paints or finishes.



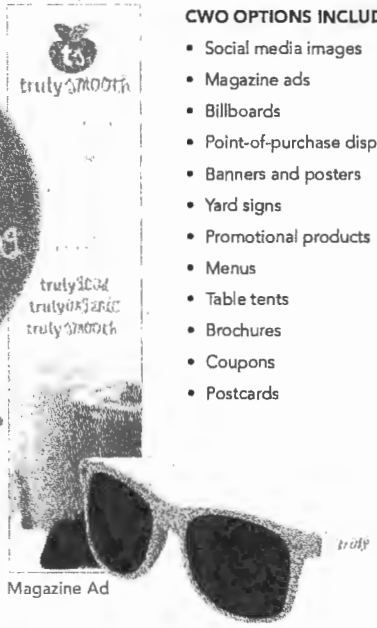
CREATIVE SERVICES

With our team, businesses no longer have to rely on third-party agencies or shops for creative services. We save companies time, money and manpower by combining our creative work order (CWO) program with their existing brand standards to create marketing collateral for unlimited locations, promotions and purposes. Our creative services also include versioning, typesetting, color correcting and retouching, variable data templates, and more.





Postcard / Coupon



Magazine Ad

CWO OPTIONS INCLUDE:

- Social media images
- Magazine ads
- Billboards
- Point-of-purchase displays
- Banners and posters
- Yard signs
- Promotional products
- Menus
- Table tents
- Brochures
- Coupons
- Postcards

CLIENT TESTIMONIALS

With our fast-paced growth, we needed a marketing solution that would allow us to maintain the integrity of our brand and offer our managers some autonomy. Magna IV helped us design a marketing portal so managers can order flyers, postcards and premium items with our brand templates, but with open fields for local details and logos. We are able to adjust templates as needed and upstream to our designers for approval. Magna IV then mails the pieces into each respective market.

This online marketplace was a vision of our owner, and Magna IV helped make it happen. They are a real partner and an extension of our team.

[redacted]

For many years, the team at Magna IV has worked with our company as our print media and fulfillment partners. They have been nothing but professional and respectful to our organization's needs!

Magna IV has always had our best interest at heart, and exceeded all our expectations when it comes to schedule, price and quality of work.

In many respects, we owe much of our success to Magna IV as they have stood by us in the good times and the bad. I can assure you that if you hire Magna IV they will bring similar results to your business. We are definitely better off with them as a partner and know we will have continued success with them for years to come.

[redacted]

To put it simply, Magna IV makes our life easier.

Their service level, quality and responsiveness is exceptional. Their attention to detail is strong—consistently delivering against our complex fulfillment needs. Whether it's creating large-format graphics for our newest gym locations or developing materials for monthly promotional marketing kits, the high-quality products help us keep our business initiatives on track.

[redacted]

CONTACT US

Looking for more information, a quote for services or a custom print marketing solution? Contact us today!

MAGNA IV

[redacted]


MAGNA IV
Printing solutions simplified.

Exhibit G – Resumes for Computer Programmers at Magna IV

Jiaqi Zhao

[redacted]

EDUCATION: University of Central Arkansas, Conway, Arkansas May 2017
Bachelor of Science, Computer Science, GPA: 3.30, Major GPA: 3.70

MAJOR COURSES: Computer Science I, Computer Science II, Assembly Languages & Computer Organization, Data Structures, Computer Architecture, Networking, Principles Programming Languages, Operating Systems, Social Implications Technology, Algorithms, Database Systems, O-O Software Development Java, Seminar in Applied Computing, Programming Mobile Devices, Software Engineering, Web Technology (Master Level), Data Mining (Master Level)

SKILLS:
Programming Language: C++, C#, CSS, JavaScript, HTML, Java, Linux, Lisp, Perl, Swift
Software and Tool: Android Studio, Angularjs, Common Lisp, Eclipse, HTTP, Magento, Microsoft Office, Notepad++, Octave cil, Pageflex, PrestaShop, PHP, Parallels, TCP, Visual Paradigm, Visual Studio, Wireshark, Wordpress, Xcode, nodejs, .NET Compact Framework
Database and Data Analytics Tool: Ajax, Oracle, OutWit Hub, R Studio, SQL, SQL Server
Operating System: Android, Linux, Mac OS, Unix, Windows
Language: Fluent in Chinese and English

EXPERIENCES
Magna IV Color Imaging, Inc., Little Rock, AR Summer 2017-Present
Programmer
- Work with scratch coding in PHP, MySQL, and work with projects involving Angularjs, nodejs, mongodb, C#, javascript, SQL, terminal and Linux server
- Develop Pageflex Extensions, Doc Actions, UI Design, Form Fill setups, Content Source Plug-ins, Web Design, PrestaShop, and Wordpress, and manage Mindfire Campaigns
- Write Crystal Reports, add functionality to the MIS system Enterprise32, and write scripts for Kodak's Rules Based Automation for changing or improving workflow
- Build Studio templates for customizable or static items and general site maintenance, and work on site skinning, report building and database implementation

[redacted] Jiangsu, China
Software Developer and Tester Intern, Web Technology Intern Winter 2016
- Assisted in developing and testing software and web applications
- Gained in-depth knowledge in creating software by using SQL, .NET, UNIX, C#, Java, and Oracle
- Joined a Web Analysis team, collected and analyzed data from the website of an optical company, filed report and sent feedback to the company, and used Magento to manage online stores
- Collaborated with the Search Engine Optimization team in developing search retargeting

[redacted], Jiangsu, China
Sales Consultant Intern Summer 2015
- Collected and analyzed marketing data, processed data pertaining to sale performance and assisted sales consultants in providing information to customers
- Gained knowledge about logistics in car dealerships

Jiaqi Zhao

[redacted]

- Counseled with customers about issues related to purchase of cars and car maintenance
- Communicated with managers about weekly sale performance and filed weekly reports

Chinese Students and Scholars Association, Conway, AR
President Spring 2015-2016

- Gained useful skills in communication, leadership, and event planning in this organization founded by Consulate General of China
- Worked with members, planned and organized regular meetings and activities, and provided assistances and supports for new Chinese students
- Led the organization to participate in school events and organized social events for Chinese students
- Planned budget and communicated with Chinese Embassy and restaurants to request for sponsorship, received large amount of sponsorship fees, and collaborated with Confucius Institute in promoting Chinese culture

RELEVANT PROJECTS:

Developed and Programmed Common Lisp Project by Using Lisp and C++ Programming Languages (Summer 2016)

- Used C++ to program a Tokenizer, which produced a list of tokens when applies to a text file
- Created Lisp program "flatten" that takes a list with embedded lists, and returns a flattened version of it
- Researched the similarities and differences between Lisp and C++

Simulated the Classic Game Tic Tac Toe Project (Summer 2016)

- Simulated the classic game Tic Tac Toe by using a server client structure to play the game realistically
- Case study about Socket Communication, the code was in VB.NET
- Presented the functions of the Socket Communication, and went through the code in detail

Designed and Developed Database Project by Using ER Win, SQL and Oracle Relational Database and DML (Fall 2016)

- Designed logic data modeling and transformed to physical data modeling by using ER Win and generated DDL scripts to build a Relational Database by using Oracle
- Developed SQL and SQL*Plus scripts to query, inserted and updated data in database system
- Created and edited queries in both relational algebra and Oracle DML language

Ajax and Database Connectivity (Spring 2017)

- Built a shopping website by using PHP and HTML; saved inventory, order, and shoppers' credit card information by using MySQL
- Integrated PHP with MySQL in Database Connectivity
- Created a login/sign up function by using MySQL, and saved shoppers' information in the database

Developed Mobile App for Sharing Music in Real Time (Spring 2017)

- Used Android to program a collaborative music playlist builder
- Developed an application for mobile devices to allow the sharing of music in real time onto one device
- Used problem solving skills to test the project

Jiaqi Zhao

[redacted]

Implemented a Research on Wineinformatics, and Published a Research Paper (Spring 2017)

- Given 10471 different wines, used the K-Nearest Neighbor algorithm to predict the regions of the wines, and calculate the accuracy of the prediction
- Used OutWit Hub to collect attributes of wines from the database, used Java to program the K-Nearest Neighbor algorithm, and the distance in KNN algorithm is calculated using Jacardian Coefficient
- Wrote a research paper in IEEE format, titled "Wineinformatics: Predicting Wine Regions by K-Nearest Neighbor"

Activities & Honors:

UCA Computer Science Club member	Fall 2013 to present
UCA Dean's List	Spring 2015 - Fall 2016
Chinese Students and Scholars Association (CSSA) at UCA	Fall 2013 – Spring 2016

PROFESSIONAL REFERENCES

[redacted]

SKILLS:

Extensive knowledge of Adobe Suite applications (such as InDesign, Illustrator, Photoshop and Acrobat), PitStop Pro, Pageflex Storefront, Pageflex Studio, Switch Automation, DesignMerge, BCC mail Manager, USPS Business Customer Gateway Applications, MindFire Studio, Fusion Pro, Microsoft Word and Excel.

EDUCATION:

University of Arkansas in Little Rock
Computer Engineering

Automotive Engineering College in Wejherowo, Poland
Associate's Degree in automotive engineering, design, development and manufacturing of cars, trucks and other vehicles.

Pageflex Storefront and Studio Training in Marlborough, Massachusetts
Pageflex Educational Services training and education on Pageflex technologies

HONORS-AWARDS:

PhiKappaPhi UALR Chapter
Membership is by invitation only and restricted to students who are ranked scholastically in the top of their class.

LANGUAGES:

English (Native or Bilingual)
Polish (Native or Bilingual)
German (Limited Working)
Russian (Limited Working)

Programmer - Little Rock, AR

● CLOSED 37 visitors 6 candidates



[redacted]

web developer

[redacted]

Applied on Wed 4/8/15 at 2:43 PM

Education

Masters in Computer and Information Science
[01/10/2011 08/01/2007]

Nepal College of Information Technology, Kathmandu

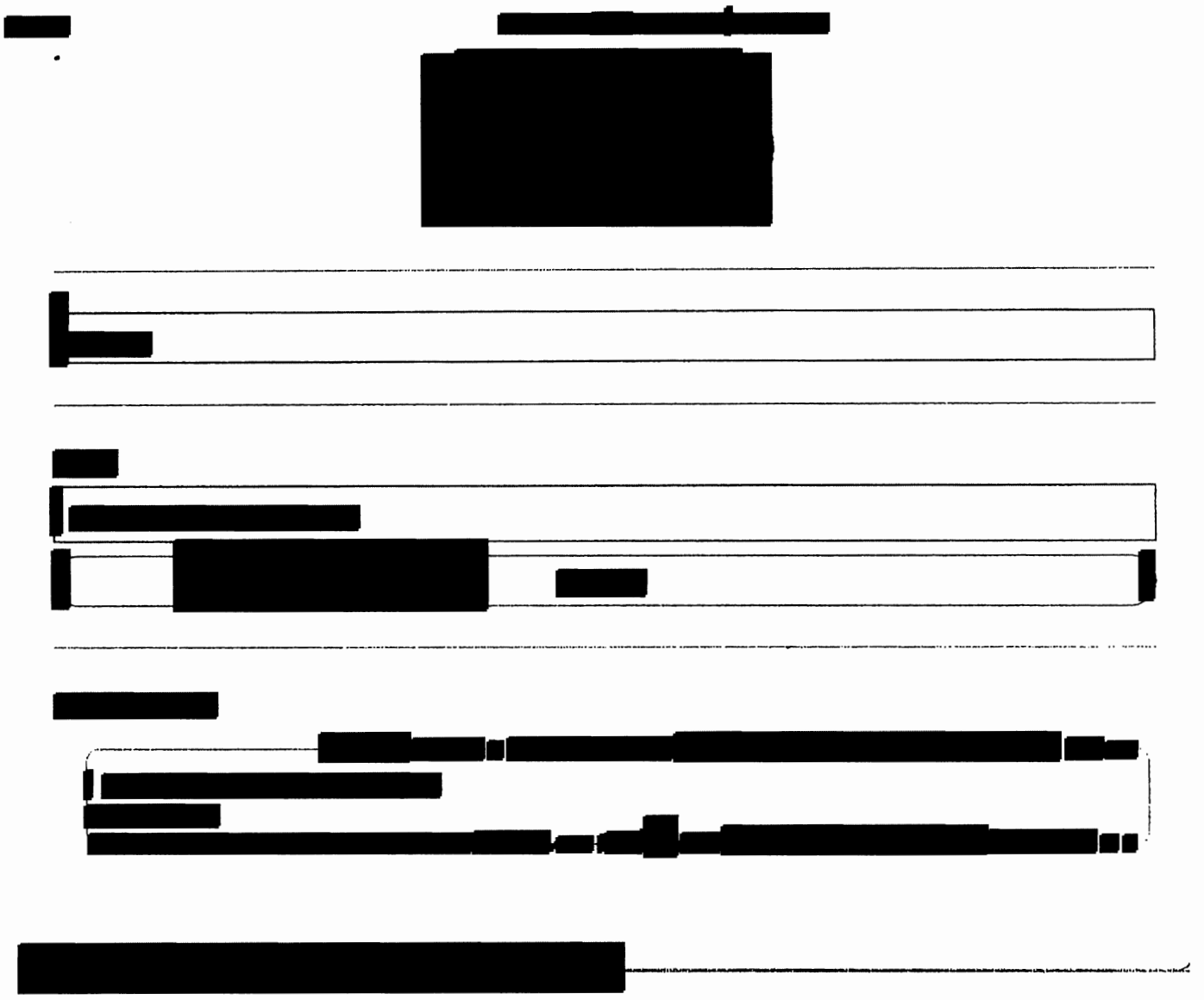
[redacted]

[redacted]

[redacted]

[redacted]





[redacted]

Education

University of Central Arkansas (UCA) - Conway, AR, USA
Master's Degree in Computer Science (Aug 2015)
GPA: 4.0

Hangzhou Dianzi (Electronic Science) University (HDU) - Hangzhou, Zhejiang, China
Bachelor of Engineering, Electronic Information Engineering (Jun 2012)

Major Courses:
Operating Systems, Data Mining, Multimedia, Topics in Software Engineering, Concurrent Programming, Web Technology, Programming Mobile Devices, Algorithms, Data Structure, Topics in Networking.

[redacted]

November 16, 2018

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
75 Lower Welden St.
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

EAC1815051715

MAGNA IV COLOR IMAGING INC
c/o MISTY WILSON BORKOWSKI
CROSS GUNTER WITHERSPOON & GALCHUS
500 PRES CLINTON AVE STE 200
LITTLE ROCK, AR 72201

RE: JIAQI ZHAO
I-129, Petition for a Nonimmigrant Worker

DECISION

Dear Sir/Madam,

On April 12, 2018, you filed a Form I-129, Petition for a Nonimmigrant Worker to classify the beneficiary under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act).

Section 101(a)(15)(H)(i)(b) of the Act relates to an alien:

> ...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)..., who meets the requirements for the occupation specified in section 214(i)(2)..., and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under 212(n)(1).

Further, section 214(i)(1) of the Act defines "specialty occupation" as:

> ...an occupation that requires--
>
> (A) theoretical and practical application of a body of highly specialized knowledge, and
>
> (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States,

"Specialty occupation" is defined at Title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(ii) as:

Exhibit D

> ...an occupation which requires theoretical and practical application of a body of highly specialized knowledge in such fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Additionally, 8 CFR, section 214.2(h)(4)(iii)(A) requires a specialty occupation to meet one of the following criteria:

> (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
>
> (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
>
> (3) The employer normally requires a degree or its equivalent for the position; or
>
> (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To be consistent with section 214(i)(1) of the Act, U.S. Citizenship and Immigration Services (USCIS) interprets the term "degree" set forth in the criteria at 8 CFR, section 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the offered position.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefits sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

The record shows your organization was established in 1975 as printing and marketing business. You have 62 current employees, gross annual income of $11,754,020. You seek to employ the beneficiary in the position of Computer Programmer for a temporary period of three years. You provided a certified labor condition application (LCA) which includes a signed statement that you will comply with the terms of the LCA. The beneficiary possesses a Bachelor of Science degree with a major in Computer Science.

In evaluating your eligibility, USCIS must determine whether you have established that the offered position qualifies as a specialty occupation.

USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that USCIS considers. With the initial filing, you submitted the following description of duties for the offered position:

- Manage Mindfire Campaigns in building html pages for cross-media projects;
- Assist in developing, supporting and extending web storefronts powered by Pageflex, PrestaShop and Wordpress;

- Build Studio templates for customizable or static items and general site maintenance;
- Site skinning, report building and database implementation;
- Collaborate with departments to streamline the workflow between systems;
- Interact with other personnel in solving complex business and technical problems;
- Work with scratch coding in PHP, MySQL;
- Work with projects involving Angularjs, nodejs, mongodb, C#, Javascript;
- Write query to select data and also modify data from SQL database; and
- Work with terminal Windows and Linux servers.

Additionally, you provided the following evidence to establish that the offered position qualified as a specialty occupation:

- A cover letter; and
- An opinion letter from Dr. Emre Celebi, Ph.D., Professor and Chair st University of Central Arkansas.

On July 17, 2018, USCIS informed you in a Request for Evidence (RFE), that the initial evidence did not establish that the job offered requires the services of a person performing the duties of a specialty occupation. You were requested to submit evidence showing that the offered position qualifies as a specialty occupation.

On October 3, 2018, USCIS received your response, which included the following:

- A cover letter, containing an updated list of duties;
- An excerpt from the *Occupational Outlook Handbook (OOH)*;
- An excerpt from the Department of State *O*NET Online* (*O*NET*);
- A copy of *Next Generation Technology, Inc. v. Johnson*
- A copy of a District Court of Ohio decision in *Residential Finance Corporation vs. USCIS*;
- A sample of job postings;
- Letters from employees; Letters from other company s;
- An expert opinion letter from Dr. Mark Smith, Ph.D., Senior Lecturer, University of Central Arkansas,
- A copy of your organizational chart; and
- Resumes of some employees that hold the position of Computer Programmer for your company.

In accordance with *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), USCIS has examined the evidence of record for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, and determined that you have not established eligibility for the requested classification by a preponderance of the evidence. A detailed discussion of the grounds for denial and the related evidence follows.

Qualifying Criteria

To qualify as a specialty occupation, the position must have met at least one of the following criteria. USCIS will discuss each of the qualifying criteria for specialty occupation below.

I. Discussion of 8 CFR, section 214.2(h)(4)(iii)(A)(1)

Degree is Normally Minimum Requirement

To meet this criterion, you must submit evidence showing that a bachelor's degree or higher in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

You submitted a certified LCA which lists an Occupation Title of Computer Programmer.

USCIS routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook* (*OOH*) for information about the educational requirements of particular occupations. The *OOH* states the following regarding the training and educational requirements for Computer Programmer positions:

> Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

The *OOH* does not indicate that Computer Programmer positions normally require a minimum of a bachelor's degree in a specific specialty. A range of educational credentials , including those less than a bachelor's degree in a specific specialty, may qualify an individual to perform the duties of a Computer Programmer.

USCIS acknowledges that you submitted an excerpt from the Department of Labor's *O*NET OnLine*, (*O*NET*) for the position of Computer Programmer. However, the *O*NET* provides only general information regarding the tasks and work activities associated with a particular occupation. The *O*NET* is not designed to assess the specialty occupation status of either occupations or particular positions within them. Rather, the *O*NET* and its Job Zone and Specific Vocational Preparation (SVP) ratings are meant to indicate only the total number of years of vocational preparation required for a particular position. The *O*NET* does not describe how those years are to be divided among training, formal education and experience. In addition, the *O*NET* makes no reference to a degree requirement in a specific specialty.

You cite in support of this petition the March 12, 2012 decision of the Administrative Appeals Office (AAO) in case number 2:12-cv-00008 and the September 29, 2017 decision in case number 1:15-cv-05663. Unpublished decisions of the AAO do not provide a binding rule of decision on the instant petition and USCIS must decide the current case only on the basis of the record of proceeding in this particular case.

Therefore, the evidence of record does not satisfy the criterion at 8 CFR, section 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree, or its equivalent, in a specific specialty, is normally the minimum requirement for entry into the particular position.

II. Discussion of 8 CFR, section 214.2(h)(4)(iii)(A)(2)

Part 1 – Common to the Industry

To meet this criterion, you must submit evidence showing that the degree requirement of a bachelor's degree or higher in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.

With your initial filing, and in response to the RFE, you submitted a sample of job postings, two expert opinion letters, and a letter from Adobe Systems Inc.

As evidence that the degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, you submitted various job announcements posted by different companies. USCIS indicated that industry standards must be for similar positions among similarly situated companies. Therefore, it must be demonstrated that the petitioner and the organization share the same general characteristics. Such factors may include, but are not limited to, information regarding the nature or type of organization and the particular scope of the operation, as well as the level of revenue and staffing. It is noted that you have enclosed announcements posted by the following firms:

- Quad Graphics;
- Minuteman Press;
- Vista print;
- Millers Professional Imaging;
- Fairfax Imaging;
- Zazzle: and
- Menasha Packaging.

Overall, the job postings suggest that although a bachelor's degree is required for most of these positions, a bachelor's degree in a specific specialty or its equivalent is not. Thus, these postings do not establish that your industry requires the expertise of someone holding at least a bachelor's degree in a specific specialty to perform job duties similar to those of the offered position. It should be noted that even if all of the job postings had indicated that a bachelor's degree or higher in a specific specialty or its equivalent were required, you failed to establish that the submitted announcements are for parallel positions in similar organizations in the same industry. For instance, the job postings are for positions in different industries and dissimilar organizations and thus, cannot be found to be parallel positions. Further, due to the generalized nature of the offered position job duties, compared to the advertised position duties, USCIS is unable to discern whether the offered position is parallel to any positions within similar organizations in its industry.

To further establish that the degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, you have enclosed an independent position evaluation letter by a recognized authority in the field of higher education. In his letter, Professor Smith describes the credentials that he asserts qualify him to evaluate the nature of the offered position, lists the duties proposed for the beneficiary and claims that the duties of the offered position executed at your establishment would require a bachelor's degree in Computer Science, or a closely related field such as Mathematics or Software Engineering. You also provided a letter from Professor Celebi which he would require a a bachelor's degree in Computer Science. However, Professor Smith and Professor Celebi assertions are insufficient in this matter.

The Professor's expertise, regarding current industry degree requirements for Computer Programmer positions is not established in the record. Based on the documentation provided, most of the Professor's experience has been in an academic setting within a university. The Professor has not provided sufficient information to establish his expertise on the practices of organizations seeking to hire Computer Programmer. Without further clarification, it is unclear how his education, training, skills, or experience would translate to expertise regarding the current recruiting and hiring practices of a firm engaged in printing and marketing or similar organizations for Computer Programmers or parallel positions. Further, the Professor's opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he/she has conducted any research or studies pertinent to the educational requirements for such positions or parallel positions in your industry for similar organizations.

The Professor concludes that his assessment is based upon a job description of the offered position. However, while the Professor provides a brief, general description of your business activities, he does not demonstrate an in-depth knowledge of your operations or how the duties of the offered position would actually be performed in the context of your business enterprise. In this matter, you have not provided any documentation in support of the Professor's opinions. The evaluation letter provides no statistical evidence or other documentation to support the professor's findings and fails to explain how the conclusions about the position were reached. While the evaluator may have anecdotal information regarding recruitment by employers for students who study Computer Science, the record does not include any relevant research, studies, surveys, industry publications, authoritative publications or other sources of empirical information as part of his review or as a foundation for his/her opinion. For the reasons discussed above, the evaluation has not provided sufficient facts that would support the contention that the offered position requires at least a bachelor's degree in a specific specialty.

It was held in *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm. 1988) that legacy Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services) may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence.

The letters of opinion provided, where employees of other companies declare a Computer Programmer to be professional in nature, does not establish that the position requires the expertise of a bachelor's degree recipient throughout the industry. None of the individuals provided documentation to verify that their respective companies routinely employ bachelor's degree recipients to perform the duties of a Computer Programmer.

Therefore, the evidence of record does not satisfy the first part of the criterion at 8 CFR, section 214.2(h)(4)(iii)(A)(2): that the degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations.

Part 2 – So Complex or Unique

To meet this criterion, you must submit evidence showing that the particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent.

With your initial filing, and in response to the RFE, you submitted a cover letter that describes the duties of the offered position.

As evidence that the offered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty, you submitted a description of the job duties, to include percentages of time for each duty and the education the beneficiary completed related to each duty listed. However, the job duties, as described, do not appear to be of such complexity or uniqueness as to require the attainment of a bachelor's degree in a specific specialty that consisted of theoretical and practical application of a body of highly specialized knowledge. You did not sufficiently identify any tasks that are so complex or unique or provide sufficient explanation of why only an individual with a degree in a specific specialty could perform them. Based on the foregoing, the evidence of the record does not establish that the offered position is significantly different from other positions within the occupational category of Computer Programmer.

While USCIS may provide a degree of due consideration to a petitioner's support letter, without further supporting evidence or additional details in the instant petition, the support letter containing the description of the job duties, is insufficient to establish that the offered position qualifies as a specialty occupation. Further, you have not provided evidence, such as industry publications or letters, which highlight the complex and unique nature of your products or services for which the beneficiary will be engaged while in H-1B nonimmigrant status.

Therefore, the evidence of record does not satisfy the second part of the criterion at 8 CFR, section 214.2(h)(4)(iii)(A)(2): that the employer's particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

III. Discussion of 8 CFR, section 214.2(h)(4)(iii)(A)(3)

Petitioner Normally Requires Degree or its Equivalent

To meet this criterion, you must submit evidence showing that you normally require a bachelor's degree or higher in a specific specialty, or its equivalent, for the position.

In response to the RFE, you submitted a copy of your organizational chart and copies of four resumes.

To establish that a Computer Programmer employed by your company is a specialty occupation you were requested to submit documentary evidence to establish that you routinely hire individuals with bachelor's degrees or comparable experience to fill this position. In response, you provided resumes of four employees and a copy of your organizational chart. USCIS acknowledges that each individual you provided education credentials for has at least a bachelor's degree. You were provided an opportunity to submit documentary evidence of your past employment practices for the offered position, including copies of employment or pay records and degrees or transcripts to verify the level of education of each individual and the field of study for which the degree was earned. However, aside from your statements, you have not submitted documentary evidence to establish that these individuals have previously held the position of Computer Programmer or have been compensated for performing duties in the Computer Programmer position. Moreover, you indicate on the instant petition that your company was established in 1975; however, you did not provide the total number of people you have employed to serve in the offered position nor did you include evidence that employees who previously held this position had bachelor's degrees in a specific specialty. Consequently, it cannot be determined how representative your claim regarding the four listed employees is of your normal recruiting and hiring practices over an approximate 43 year period. Therefore, you have not demonstrated that you have historically hired individuals who hold at least a bachelor's degree in a specific specialty, or its equivalent, for employment as a Computer Programmer.

While you claim that the offered position requires a degree, your opinion alone cannot establish the position as a specialty occupation. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, as the minimum for entry into the occupation as required by the Act. If USCIS was limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F.3d. 384 (5th Cir. 2000).

Therefore, the evidence of record does not satisfy the third criterion at 8 CFR, section 214.2(h)(4)(iii)(A)(3): that the employer normally requires a degree, or its equivalent, in a specific specialty for the position.

IV. Discussion of 8 CFR, section 214.2(h)(4)(iii)(A)(4)

Knowledge Required to Perform Specified Duties is Associated with Degree

To meet this criterion, you must submit evidence demonstrating that the nature of the specific duties of the offered position are so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent.

In your response to the RFE, you submitted a detailed description of the job duties to include the percentage of time for each duty.

As stated above, the evidence does not establish that the nature of the specific duties of the offered position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The job duties, as described in your letters of support, do not establish that the offered position is so complex or special as to require the attainment of a bachelor's degree in a specific specialty. While the proposed duties may include familiarity and experience with different technological platforms and/or applications, you have not described with sufficient detail how they are more specialized and complex than those of other Computer Programmer positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. Due to the lack of detail in the description you have provided, it cannot be determined that these duties would require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in a specific specialty as a minimum for entry into the position. Further, you have not provided evidence, such as industry publications or letters, which highlight the specialized and complex nature of your products or services for which the beneficiary will be engaged while in H-1B nonimmigrant status.

Therefore, the evidence of record does not satisfy the criterion at 8 CFR, section 214.2(h)(4)(iii)(A)(4): that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

You have not demonstrated that any of the four criteria enumerated in 8 CFR, section 214.2(h)(4)(iii)(A), above, are present in this proceeding. As such, the evidence of record does not establish that the job offered qualifies as a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act. Therefore, your petition is denied.

If applicable, the portion of the petition requesting an extension of stay or change of status for the beneficiary is also denied because the nonimmigrant visa petition filed on the beneficiary's behalf is denied.

If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you may file a motion or appeal of this decision by completing a Form I-290B, Notice of Appeal or Motion. You may also include a brief or other written statement in support of your appeal. The appeal must be filed within 33 days from the date of this notice. If an appeal or a motion is not filed within 33 days, this decision is final.

You must send your completed Form I-290B and supporting documentation with the appropriate filing fee to:

USCIS 290B
PO Box 21100
Phoenix AZ 85036

To obtain the Form I-290B, visit www.uscis.gov/forms. For the latest information on filing location, fee, and other requirements, refer to the Form I-290B instructions; review 8 CFR 103.3 or 103.5; call our USCIS Contact Center atl-800-375-5283; or visit your local USCIS office.

The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO atwww.sba.gov/ombudsman or phone 202-205-2417 or fax 202-481-5719.

Sincerely,

Laura Zuchowski

Laura B. Zuchowski
Director

U.S. Department of Homeland Security
Washington, DC 20528

U.S. Citizenship and Immigration Services

Interoffice Memorandum

To: SERVICE CENTER DIRECTORS

From: Fujie O. Ohata /S/
Director
Service Center Operations

Date: January 6, 2005

Re: Guidance on the Limitation of Denials Based on Requests for Evidence Standards Not Required by the Statute, Regulations or Form Instructions

Purpose

The memorandum provides guidance to Service Centers limiting the use of requests for evidence not supported by the Immigration Nationality Act (INA), the regulations or form instructions.

Background

Title 8 Code of Federal Regulations, (8CFR) at 103.2(a) indicates that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instruction on the form. The 8CFR 103.2(b)(8) discusses the requirements relating to requesting missing initial or additional evidence.

Recently CIS Headquarters has become aware that denial decisions are being issued as a result of Requests for Evidence (RFEs), which is not required by the statute, regulations or form instructions.

Requesting additional evidence not required by the statute or the regulations

Whenever possible Service Centers should limit the request for required initial evidence and or additional evidence to evidence and documentation required by the statute, regulations or as stipulated on the form instructions. These are the requirements and standards that the public is aware of and should be following.

From time to time it is necessary to request additional evidence not specifically required by the statute or regulations. When this occurs Service Centers should carefully explain in the request the specific need or reason(s) for the evidence or documentation requested.

Suspected Fraud

Request for additional evidence should not be used as a devise to investigate suspected fraud. Cases in which fraud is suspected should be referred to the Fraud Detection Unit (FDU) at the respective Service Center.

Denials Subsequent To a Request for Evidence

If after a response to a request for required initial evidence or additional evidence is received, it is determined that the case should be denied, the denial decision should be based on statutory or regulatory requirements. The sole basis of such a denial should not be that the petitioner or applicant failed to provide evidence that was requested by the Center but is not required by the statute, regulations or form instructions. Petitions and applications should not be denied only because the petitioner or the applicant refused to submit non-mandatory evidence in response to a RFE.

Contact Information

This guidance is effective immediately and prospectively. For questions related to this guidance, please contact Service Center Operations through appropriate channels.

JS 44 (Rev. 08/18)

CIVIL COVER SHEET

4:19-cv-57-BRW

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

MAGNA IV COLOR IMAGING, INC., AND JIAQI ZHAO

(b) County of Residence of First Listed Plaintiff PULASKI COUNTY, AR
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
George Raff Ernst and Misty Borkowski (501) 371-9999
Cross, Gunter, Witherspoon & Galchus, P.C.
500 President Clinton Avenue, Suite 200, Little Rock, AR 72201

DEFENDANTS

DEPARTMENT OF HOMELAND SECURITY, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, L. FRANCIS CISSNA, LAURA B. ZUCHOWSKI

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
5 U.S.C. § 702, 8 U.S.C. §§ 1101, 1184

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ 0.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 01/25/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____